



MAYOR AND COUNCIL AGENDA

NO. 13 DEPT.: Community Planning and Development Services DATE PREPARED: 4/21/05
STAFF CONTACT: Deane Mellander, Acting Chief of Planning FOR MEETING OF: 5/2/05

SUBJECT: Concept Plan Amendment CPD1999-0004B, Falls Grove: To allow a hotel of 125,000 to 150,000 square feet in lieu of a corresponding amount of office; permit office development in lieu of multi-family development on a residual multi-family residential parcel; allow a child care facility as an approved use in Falls Grove; transfer unused retail space from the Village Center to one of the neighboring parcels.

RECOMMENDATION: Hold Public Hearing

DISCUSSION: The amendment proposes several changes to the approved concept plan for the Falls Grove Comprehensive Planned Development. The first is to redesignate two sites in the Falls Grove development as suitable for hotel or office use on either side of Blackwell Road fronting on Shady Grove Road. Only one of the parcels could be used for a hotel. The hotel would be between 125,000 and 150,000 square feet, replacing an equal amount of office/R&D space.

The second part of the request is to allow office use on a small parcel of land at the intersection of Woodhill Road and West Montgomery Avenue. This parcel is currently designated for multi-family use, but the maximum allowable amount of multi-family in Falls Grove has already been approved.

The third part of the request is to allow a child care facility, an institutional use, as an approved use within Falls Grove. Currently, the Falls Grove Concept Plan does not allow institutional uses, as defined in Section 25-643(5)a of the Code.

Finally, the applicant requests that approximately 20,000 square feet of retail that was not built with approved Village Center be allowed to be potentially built on one of the two aforementioned office parcels. This would be in the form of ground-floor retail space in the remaining office buildings, principally in the proposed building on Parcel B. The executed agreement between the condo associations and the applicant limits any one retail tenant to 3,000 square feet, and entrances have to front onto Shady Grove Road. No convenience stores are permitted.

As part of the consideration of this amendment, Falls Grove has offered to abandon and relinquish the ability to develop 75 units of the remaining 119 units currently still available to build per the concept plan. Since all of the approved multi-family has been committed, any new units must be either one-family attached or detached. This would result in a total of 1,486 units out of the approved total of 1,530.

Boards and Commissions Review: The Planning Commission considered this application at its meeting on April 13, 2005. The Commission voted 4-0 with 3 absent to recommend approval. Its recommendation is shown on Attachment 2.

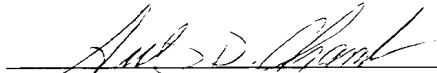
Next Steps: Staff recommends that the public hearing record be held open for two weeks. Following close of the hearing record, the Mayor and Council will discuss the testimony from the public hearing and instruct the staff on further steps.

PREPARED BY:

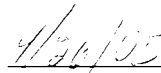


Deane Mellander, Acting Chief of Planning

APPROVED BY:

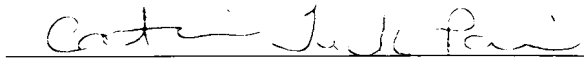


Arthur D. Chambers, AICP, Director, CPDS

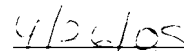


Date

APPROVED BY:



for Scott Ullery, City Manager



Date

LIST OF ATTACHMENTS:

1. Staff report to the Planning Commission
2. Planning Commission recommendation
3. Applicant's statement
4. Public hearing Exhibit 1: e-mail from Nolan Sklute
5. Executed agreement between SGB Office Group and Falls Grove condominiums I & II
6. Location map




City of Rockville

MEMORANDUM

April 7, 2005

TO: Planning Commission

FROM: Scott E. Parker, AICP, Acting Chief of Planning 

SUBJECT: Re-evaluation of the Falls Grove Concept Plan Amendment, CPD1999-0004B; 1. To allow a hotel of 125,000 to 150,000 square feet in lieu of a corresponding amount of office. 2. Permit office development in lieu of multi family development on a residual multi-family residential parcel. 3. Allow a child care facility as an approved use in Falls Grove. 4. Transfer unused retail space from the Village Center to one of the neighboring commercial parcels.

BACKGROUND

On February 22, 2000, the Mayor and Council approved CPD99-0004, authorizing development on the former Thomas Farm site, now known as Falls Grove. The approval authorized a total of 1,530 dwelling units, 150,000 square feet of commercial retail and 950,000 square feet of office/research and development space. Application was a Comprehensive Planned Development similar to King Farm

There have been a total of 1,411 units approved through the residential series of Detailed Applications for Falls Grove, which represents the total number of units they are planning to build. Only one 75,000 square foot office building has been constructed, which is located at the 138,000 square-foot Village Center (completed). The Falls Grove Corporate Center, a 235,000 square foot signature office building, has been approved. Building permits are pending.

On December 1, 2004, this series of amendment requests were presented to the Planning Commission for a recommendation to the Mayor and Council. After considering the presentation and listening to testimony, the Planning Commission voted to recommend denial of the hotel use and the office on Woodhill Road. The Commission, however, recommended approval of the daycare use and the additional accessory retail use, as outlined within this memo.

Since this meeting, the applicant has held seven neighborhood meetings, as well as two "mini design charrettes," so that comments could be elicited from citizens and an accord could be

reached with the adjoining neighbors of this property. The applicant is representing, through the attached Memorandum of Understanding (MOU), that the issues formerly associated with this project have been successfully mitigated to the satisfaction of the majority of residents near this property (attachment 1).

PROPOSAL and ANALYSIS

Proposal

The applicants are proposing a change to the Concept Plan that has three parts, which are as follows:

1. To allow a hotel of 125,000 to 150,000 square feet in lieu of a corresponding amount of office.
2. Permit office development in lieu of multi family development on a residual residential parcel
3. Allow a child care facility as an approved use in Falls Grove.
4. Transfer unused retail space (approximately 20,000 square feet) from the Village Center to one of the neighboring commercial parcels.

Analysis

The first request of this Concept Plan amendment is to allow a hotel use in lieu of 125,000 – 150,000 square feet of office. The hotel would be designated on two potential office sites, both of which are on Shady Grove Road, flanking both sides of the new Blackwell Road as it enters Falls Grove. The hotel would be allowed on only one of the parcels.

As part of this application, the applicant has submitted a traffic statement that indicates there will be a reduction in traffic trips associated with a hotel in lieu of office space. It should be noted that the allowable 950,000 square feet of for Falls Grove was divided between 425,000 square feet of office and 425,000 square feet of R & D uses, as defined within the Concept Plan. Falls Grove has stated that the office space surrendered through this amendment would be deducted equally from the amount of approved office and the amount of approved R & D space.

It has also been presented to staff that a hotel on this site, given market conditions and site layout, would be significantly smaller than an office building on this site. This would ultimately reduce any parking provided on the site significantly. The applicant has stated that the hotel will be surface parked exclusively, while a 125-foot office building on this site could potentially have multiple stories of parking within a structure.

The second part of the request is to allow office construction on a small parcel of land at the intersection of Woodhill Road and West Montgomery Avenue. This parcel is currently designated multi-family by the Concept Plan. The applicant has stated that no more multi-family

can be built on Falls Grove by Resolution, and that this parcel is ideal for a small (three or four story) office building.

The third part of the request is to allow a child care facility as an approved use within Falls Grove. Currently, the Falls Grove Concept Plan does not allow Institutional Uses, of which child care is considered under Section 25-643(5)a.

The fourth part of the request is to allow the approximately 20,000 square feet of retail that was not built with the approved Village Center be allowed to be potentially built on one of the two aforementioned office parcels.

As part of the consideration of this amendment, Falls Grove has offered to abandon and relinquish the ability to develop 75 units of the remaining 119 units currently still available to build per the Concept plan. To date, Falls Grove has constructed 1,411 units of the approved 1,530. It should be noted that no more multi-family development can be built, because their Concept Plan mandated cap of 745 has been attained. Any remaining development would have to take the form of single family attached or detached.

STAFF RECOMMENDATION

1. Request to allow 125,000 -150,000-hotel use – Staff recommends approval of this change. The Concept plan that approved Falls Grove did not specify the amount of office that could be built on any one parcel. The approval was for an overall total square footage, regulated only by height, which in the case of office is 125 feet. This parcel was designated for office, and could be developed with a 125-foot tall building with accompanying parking structure. Conversely, the type of hotel that would be built on this parcel is unlikely to be this tall, given the market demands for hotel uses in the area, and the type of facility contemplated by the applicant. Therefore, parking for a hotel use would be significantly less.

Staff has consistently informed the applicant that a thorough evaluation of any parking associated with an office building would be done to ensure the mitigation of any potential negative effects on adjacent residential properties. This is consistent given the applicant's statement that a hotel for this area would have all surface parking, while an office building would have potentially have a significant structure.

Also, a hotel generates less overall traffic trips than an office. While it is true that trips associated with a hotel are potentially spread out over a wider time frame of the day, staff feels that the overall reduction of trips, and parking, is more significant.

Staff also feels that this use is appropriate for the area and will provide a needed neighborhood and community resource.

Staff originally recommended approval of this part of the amendment, and we continue to do so..

2. Permit office development in lieu of multi-family development on a residual parcel – The size and configuration of this parcel, combined with the five-story office buildings and four story residential structures adjacent, makes it an appropriate place for a small office building. The Transco gas right-of-way easement on the property creates a difficult development issue that is more significant with residential development than it is for commercial. An office building on this property would be low scale, conducive to neighborhood-serving medical or service type uses, including, but not limited to, a single tenant user.

Staff recommends approval of this part of the amendment, with a condition that the height of the building be limited to a maximum of four stories, commensurate with the adjacent office buildings and the adjacent four-story multi-family rental component.

3. Allow a child care facility as an approved use in Fallsgrove – This use was recommended for approval at the December 1, 2004 meeting, and staff supports this decision.

4. Transfer unused retail space from the Village Center to one of the neighboring commercial parcels – The supported recommendation was to permit 14,000 square feet of unused retail from the Village Center to be located on other commercially designated properties. Staff supports this, as well.

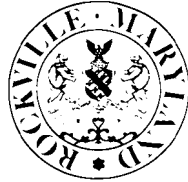
Staff previously recommended approval of this item, as amended, and we continue to do so.

NOTIFICATION:

Notices were sent to approximately 1,275 residences and businesses. As required by the Zoning Ordinance, certified mail was sent to approximately 106 property owners adjacent to Fallsgrove

Attachments

1. Applicant's justification package



City of Rockville

MEMORANDUM

April 21, 2005

TO: Mayor and Council

FROM: Planning Commission

SUBJECT: Recommendation on Concept Plan Amendment CPD1999-0004B; Falls Grove Associates, applicant. To allow 125,000 to 150,000 square feet of hotel in lieu of equal amount of office space; allow office development on a residual multi-family parcel on Woodhill Road; add child care facility as an approved use in Falls Grove; transfer unused retail from the Village Center to two office parcels adjacent to Blackwell Road. The Planning Commission will be making a recommendation to the Mayor and Council for its review of the proposal on May 2, 2005. This is the second meeting in front of the Planning Commission on this item.

At its meeting on April 13, 2005 the Planning Commission reviewed the above referenced Comprehensive Planned Development Amendment application. The proposal is to revise the land use designations for several parcels in the Falls Grove development, as detailed above.

The Planning Staff Report recommended approval of the proposed amendment. The Planning Commission received comments from the staff, the applicant, and members of the public. The applicant has offered to forego the ability to develop 75 of the remaining 119 units currently still available to build per the Concept Plan. They have constructed all of the 745 multi-family units approved by the Concept Plan. Any of the remaining units will have to be either one-family attached or detached units.

Seventeen citizens including four representatives of homeowner or civic associations spoke either for and against the proposed amendment. Those who spoke in support of the application cited the added amenities the applicant will provide and less traffic impact than the office building. Those who spoke against the proposal expressed concerns about having a hotel in a residential area, security, building mass, and parking impact.

In deliberations, Commissioner Hilton noted that the developer had done a very poor job of involving the Falls Grove community in its initial application in December but had made an excellent effort in the intervening time. Commissioner Johnson noted that there were strong feelings on both sides of the issue, but that the proposed amendment is the best way to go and it

Page 2
April 21, 2005

will have a lesser impact overall. Commissioner Ostell originally opposed the hotel, but notes the market forces at work. To say no for open space for a few years is not appropriate. Commissioner Wiener stated that the hotel proposal is better than the original office designation. It is a better use of the property and the lesser of two evils. Commissioner Hilton added that the City works hard to adopt transitions that minimize impact at the intersection of zoning types. The proposed amendment provides a much milder transition than 2 office buildings.

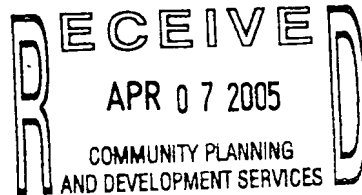
Therefore, on a motion by Commissioner Johnson, seconded by Commissioner Wiener, the Planning Commission voted 4 to 0, with 3 absent, to recommend approval of Concept Plan Amendment CPD1999-0004B.

/dem

cc: Planning Commission

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April 7, 2005

PATRICIA A. HARRIS
301-215-6613
patricia.harris@hklaw.comVIA UPSCity of Rockville
Planning Commission
111 Maryland Avenue
Rockville, Maryland 20852
c/o Mr. John Britton, ChairRe: Fallsgrove – Concept Plan Amendment
Plan number:

Dear Mr. Chairman and Members of the Planning Commission:

At the December 1, 2004 Planning Commission meeting, on behalf of Fallsgrove Associates, we presented for your consideration and recommendation of approval, a proposed Concept Plan Amendment to allow for the following specific additional uses within the Fallsgrove project:

- Construction of a hotel, in lieu of a corresponding amount of approved office/R&D square footage on a parcel of land containing approximately 3.5 acres located at the southeast corner of Shady Grove Road and Blackwell Road ("Parcel A" for purposes of this letter);
- Development of an office, on the remaining undeveloped parcel containing approximately 1.4 acres at the intersection of Woodhill Road and Key West Boulevard (the "Woodhill Road Parcel");
- A child day care facility as an approved use within Fallsgrove; and
- The transferring of the balance of unused retail space from the Village Center to the neighboring commercially designated parcels.

After considering our presentation and the testimony by the residents of Fallsgrove, the Planning Commission voted to recommend denial of the hotel use on Parcel A and the office use on the Woodhill Road Parcel and to recommend approval of the day care use and additional accessory retail uses.

We are now very pleased to report that Fallsgrove Associates and the Condominium Associations of Condominium Residences I and II of Fallsgrove have reached an agreement with respect to the proposed hotel and office development. This agreement is set forth on the enclosed draft Memorandum of Understanding. Fallsgrove Associates and Condominium

Associates I and II intend to finalize and execute the Memorandum of Understanding prior to the Planning Commission meeting on April 13, 2005 and the parties do not expect any of the substantial provisions of the Memorandum of Understanding to change. Thus, we again present to you the proposed amendment to the Falls Grove Concept Plan for your consideration.

Because the Memorandum of Understanding reflects a truly collaborative effort on the part of Falls Grove Associates, the leaders of the various Falls Grove homeowner groups and the Falls Grove residents themselves, we think it would be helpful to explain what has transpired since the December 1, 2004 Planning Commission meeting.

It was immediately apparent in listening to your comments and those of our neighbors during the December 1st meeting, that we had failed to effectively explain, both in our presentation and in prior meetings with the community, the allowed uses, densities and heights set forth in the original approved Comprehensive Planned Development and the changes we were suggesting associated with our proposed Concept Plan Amendment. Because we truly believe that the hotel use on Parcel A and office use on the Woodhill Road Parcel are, in many ways of greater benefit to the surrounding area than the presently approved uses, we diligently pursued a dialogue with the community.

Following the December 1st Planning Commission hearing, we notified the community and held a total of eight nightly meetings with the Falls Grove residents at an office building in the community to share with them all aspects of the existing zoning and our proposal. Our goal was to actively solicit their comments and recommendations. These meetings occurred on January 17, 18, 21, 22 and 23, February 9 and 10 and March 7th. During two of the meetings, the architect responsible for the design and layout of the hotel conducted a "mini design charrette," in an effort to capture and respond to all of the residents' comments and suggestions with regard to architecture. Subsequent to the meetings with the residents, we met with the leadership of the Condominium Homeowner Associations as well as several of the other Falls Grove leaders on numerous occasions, in an effort to reach a mutually acceptable resolution of the development proposal.

Following the Planning Commission meeting, our negotiations with the hotel had progressed to the point that fortunately we were able to disclose to the community that we have been talking to Hilton Hotels. Thus, during our meetings we were able to discuss the details of the style and quality of the hotel itself. We also discussed the view corridors that the hotel afforded the surrounding residents and the fact that the two office buildings would not provide such a view corridor regardless of the height of the office buildings. In addition, we were able to discuss the reduction in a.m. and p.m. traffic that resulted from the conversion of the office use to hotel use which provides a significant benefit to the community. The reduction in traffic was demonstrated empirically based on data agreed to by the City.

A considerable amount of time during the community meetings was spent focusing on the improvements themselves and the associated parking that would accompany the improvements. The less intense hotel use, which generates less traffic and thus requires considerably less parking than the office use, allows the parking structure on the hotel parcel to be eliminated.

It would be disingenuous if we did not mention that the predominant issue for the community was the one remaining parking structure needed in connection with the office building on the northeast corner of Blackwell and Shady Grove Road. The Applicant has worked very diligently and has done everything it can within reason to mitigate any impact that this parking structure may have (these efforts include recessing the parking structure approximately five feet, relocating its entrance closer to Shady Grove Road, eliminating any access from Woodhill Road and installing generous landscaping and a green screen).

Based on the enclosed Memorandum of Understanding, we respectfully request that the Planning Commission reconsider its initial recommendation with respect to the Concept Plan Amendment. ~~More specifically, we respectfully request that the Planning Commission~~ consider the following recommendations:

1. Approval of the development of a hotel use on Parcel A.
2. Approval of the use of the Woodhill Road Parcel for office use.
3. Reaffirm prior action allowing child care facilities as a permitted use within Falls Grove.
4. Reaffirm prior action permitting up to 14,000 square feet of unused retail from the Village Center to be located on other commercially designated parcels.

We look forward to the opportunity to present the proposed Concept Plan Amendment and corresponding Memorandum of Understanding to you in greater detail at the April 13, 2005 Planning Commission meeting.

Thank you for your consideration of this request.

Very truly yours,

HOLLAND & KNIGHT LLP



Patricia A. Harris
Enclosures

cc: City of Rockville Planning Commission Members
Mr. Nolan Skulte
Mr. Thiel Sullivan
Mr. Jeff Weber
Mr. Scott Parker
Mr. Arthur Fuccillo
Mr. Eric Hart

Memorandum of Understanding
(April 6, 2005)

FALLSGROVE CONCEPT PLAN AMENDMENT
PROPOSED AGREEMENT WITH CONDOMINIUM RESIDENTS

The matters set forth in the following memorandum of understanding are subject, in each instance, to the review and approval of the City of Rockville pursuant to its rules and regulations.

This Memorandum of Understanding is by and among Lerner Enterprises, LLC, as developer of Parcels A and B, Fallsgrove Associates, LLC as developer of Parcel C, (herein collectively referred to as Developer/Applicant), and the Condominium Associations of The Condominium Residences I and II of Fallsgrove, and the successors and assigns of each.

If both the Fallsgrove Concept Plan Amendment No. CPD1999-0004; Fallsgrove Resolution No. 1-00, allowing among other things for a Hotel on Parcel A and an office building on Parcel C, both identified on attached Exhibit A, and the Detailed Applications for the Hotel on Parcel A, the Office Building on Parcel B, as well as the Office Building on Parcel C, are approved consistent with this memorandum of understanding and the conditions set forth herein, Lerner Enterprises, LLC and Fallsgrove Associates, LLC, hereby bind each of Parcels A, B and C as follows:

(1) Provided nothing has been initiated by any of the condominium residents that would prevent the Developer/Applicant from undertaking such work on an immediate basis, the Developer/Applicant agrees that prior to the commencement of any work on any of the buildings under any of the three approved Detailed Applications, work shall commence on the expansion of the brick/wrought iron wall-fence that sporadically appears along certain sections of the perimeter of the condominium community in several areas marked on Exhibit B (back of Buildings I and II from Woodhill to Fallsgrove, between exterior garages on the Blackwell side of Building II, and certain sections along Woodhill) and, in addition thereto, work shall commence on the installation of the wrought-iron traffic gates at the entrances to the condominium project —the design to be developed in conjunction with the CR Associations, one illustration of which is shown on Exhibit C. (This matter is critical to help alleviate security concerns, and requires city approval).

(2) Provided nothing has been initiated by any of the condominium residents that would prevent the Developer/Applicant from undertaking such work on an immediate basis, the Developer/Applicant agrees that prior to the commencement of any work on

any of the buildings under any of the three approved Detailed Applications, construction shall commence on a parking lot for 20 vehicles on Parcel B between the parking garage and Woodhill Road for the exclusive use of the condominium residents and/or their guests, as shown on attached Exhibit D. Construction of the aforesaid parking lot will be completed as expeditiously as possible. All liability associated with the use of the lot, lighting, maintenance and repairs, and snow removal will be the responsibility of the developer.

(3) The parking garage on Parcel B will not exceed two and one half above grade levels as shown on Exhibit E, with any additional levels to be below grade..

(4) The parking garage on Parcel B will be screened with a 3 to 7 foot berm (to the maximum extent feasible) and landscaped with evergreens as shown on attached Exhibit E. ~~Additionally a lattice-work and evergreen arrangement will be installed along~~ the edge of the garage roof line and in between the floors of the parking garage on the side facing Woodhill Road. While the parking facility will not be invisible, its appearance will be significantly shielded from view and enhanced.

(5) The height of the office building on Parcel B will not exceed five stories.

(6) No entrance for the Office Building or parking structure on Parcel B will be located on Woodhill Road. The only entrance on Woodhill Road for Parcel B will be for the parking lot reserved exclusively for the use of Condominium residents and/or guests.

(7) Applicant will pursue efforts to locate on Shady Grove Road an entrance into and/or an exit out of the parking structure on Parcel B, as shown on Exhibit A.

(8) Applicant will ensure that no daily parking fees are charged for use of the unreserved parking spaces in the parking structure serving Parcel B and that no more than 65% of such spaces shall be reserved pre-paid spaces. This condition is subject to re-negotiation after a period of fifteen years.

(9) Allowed retail/restaurant uses in the Office Building on Parcel B will have front door entrances on Shady Grove Road only (with the corner spaces having emergency access points on the sides of the building if required by code and, except for food/restaurant uses and service oriented uses, such as a Red Door Salon, will not exceed 3,000 square feet for any one retail tenant. No convenience store such as 7/11 will be allowed.

(10) The height of the Hotel on Parcel A to be limited to 6 stories, as depicted in documents attached to application and in attached Exhibit F.

(11) Signage on the side of the Hotel facing Blackwell Road will be subdued and placed in locations to make it less obtrusive. Building signage on the side of the Hotel facing Blackwell Road will be as shown on attached Exhibit F and may be illuminated (not flashing, single channel internally illuminated and or rear illuminated (halo

style).letters). Monument signage may be erected at the entrance to the Hotel closest to Shady Grove Road or on Shady Grove Road.

(12) Landscaping along Blackwell Road on the side of the Hotel will be enhanced to offer a more attractive view for the condominium residents as shown on Exhibit D.

(13) Entrances into the Hotel parking lot will be placed on Blackwell Road to cause the least amount of interference with traffic along Blackwell Road; on the one end, as close to Shady Grove Road as possible and on the other end, as close to the property line as is possible, as shown on exhibit D.

(14) Nighttime security for the Hotel will be provided. The hotel staff will be made aware of the citizens concerns and will be available 24 hours a day, 7 days a week to address any situation that may arise. Every effort will be made to assure that the parking area remains quiet after hours, with any problems or complaints to be handled immediately by the Hotel Manager on duty.

(15) Hotel meeting rooms will be limited in size not to exceed in total when combined together 3,000 square feet, so as to discourage use for large third party social events. The kitchen facility on site will not be sized to handle the food preparation needs of any large social events.

(16) The Hotel dumpster will be located out of sight from Blackwell Road. It will be screened from view and will be located at the rear of the Hotel along the southern property line as shown on exhibit D, with the approval of the City.

(17) No ancillary retail establishments, other than what is usual and customary in lobby shops associated with limited service hotels will be allowed in the Hotel. The restaurant and bar area within the Hotel will primarily serve the guests and invitees of the Hotel.

(18) Every effort will be made, including signage, to preclude anyone associated with the Hotel from parking on Blackwell Road. In the event that it is determined that a Hotel employee or guest is parking on Blackwell Road, Developer will follow City and County laws and ordinances for its removal.

(19) The residents of the Condominiums at Falls Grove will continue to have the opportunity to be involved in the review of Hotel interior and exterior for compliance with quality standards prior to and during the Detailed Plan Application process. The Developer/Applicant will notify the presidents of each of the association boards of Condominium Residences I and II when information is ready for their review.

(20) The Condominium Residences, within the Falls Grove Community, will be provided with an opportunity to review all parking area site lighting decisions prior to and during the Detailed Application process for compliance with this memorandum of understanding. This includes lighting in the Hotel parking lot and in the office building

parking structure on Parcel B. Applicant intends to use downward directed lighting at the lowest possible candlelight that assures public safety concerns and no less than is required by code.

(21) The Hotel will provide a generator to ensure electricity to a portion of the Hotel, which area will be available to the Falls Grove Community residents in case of an area-wide blackout.

(22) Use of the Hotel pool and exercise facility by residents of the condominiums will be at no charge during the hours of 9:00 A.M. to 5 P.M.

(23) Use of the Hotel meeting room(s) (or restaurant area, if meeting rooms are needed) by the condominium associations will be made available by the Hotel (no more often than once per month), without charge on at least one week's prior notice for scheduling purposes.

(24) Applicant will clean up debris on Parcel A, Parcel B and Parcel C on a continuing basis.

(25) Applicant will work with the City of Rockville to initiate operations of the multi-modal center.

(26) The Memorandum of Understanding shall be binding on the Developer/Applicant and its successors and assigns.

(27) The amount of retail space in the office building on Parcel B shall be limited to 19,000 square feet in total regardless of the amount approved by the City.

(28) The final architectural design of the Office Building and parking structure on Parcel B will be submitted to the presidents of each of the association boards of Condominium Residences I and II for their review (so that they can assure compliance with this memorandum of understanding) prior to and during the Detailed Application process.

(29) No changes or modifications to the overall Falls Grove Comprehensive Plan shall be submitted to the City of Rockville which are in contravention of this Memorandum of Understanding without the expressed written approval of the boards of Condominium Residences I and II of Falls Grove.

(30) If any party hereto believes any other party has breached an obligation under this Memorandum of Understanding, then such party may submit such breach, in writing to the other party and the parties shall meet at a mutually convenient time to discuss the alleged breach. If no sooner than ten (10) days after such meeting the party who has alleged to have breached this understanding fails to commence to remedy such breach, any party may submit the dispute to binding arbitration (the "Arbitration"). If either party elects to submit a matter to such Arbitration, such party shall so notify the other party that

such party has elected to have the issues submitted for determination by a three-member panel (the "Arbitrators") of the American Arbitration Association ("AAA"). The Arbitration shall be conducted in accordance with applicable Commercial Arbitration Rules of the AAA (the "Rules"), then in effect, except as follows:

- (a) The Arbitration shall be conducted by the office of the AAA in closest proximity to the Premises.
- (b) The Arbitration shall be expedited to completion within thirty (30) days after notice from Tenant electing to arbitrate.
- (c) The three-member panel shall be selected according to the AAA Rules.
- (d) The Arbitrators shall determine only those issues presented by the parties.
- (e) If the Arbitrators determine that a party failed to act in accordance with this Memorandum of Understanding they shall direct that such breach be corrected by the defaulting party.
- (f) The Arbitrators shall order (i) reimbursement by the defaulting party of all actual costs and expenses incurred in the Arbitration by the non-defaulting party, if default is found, or (ii) in the event arbitration is initiated and later withdrawn unilaterally by the alleging party or, upon final determination default is not found, reimbursement by the alleging party of all actual costs and expenses incurred in the Arbitration by the non-alleging defending party, as the case may be.
- (g) Because of the expedited process agreed to herein, no discovery shall be allowed except for the following: seven (7) days prior to the scheduled hearing, the Parties shall exchange all documents which the Parties intend to use at the scheduled hearing.
- (h)
 - (i) After all of the evidence has been presented, and the hearing has concluded, the Arbitrators shall issue a ruling and/or an award within fifteen (15) days.
 - (ii) A judgment upon that award shall be enforceable in any court having jurisdiction of such matters.
 - (iii) The Arbitrators shall have no authority to award punitive damages or exemplary damages or other damages.
- (i) Each Party acknowledges that, by entering into these provisions, each Party has agreed to arbitrate disputes and that such agreement necessarily entails a waiver of numerous rights that the Party might have were such disputes to be determined other than pursuant to Arbitration. Nonetheless, each Party knowingly and voluntarily waives all rights that it might otherwise have, including without limitation, the right to litigate such disputes in a state court forum or federal court forum having jurisdiction over this matter; the right to conduct discovery in accordance with the rules of the court in which

the litigation concerning the dispute might otherwise be filed; the right to trial in such court, including without limitation the right to trial by jury; and the right to obtain certain damages and remedies that might not be awardable by the Arbitrators hereunder; and the right to an appeal of the Arbitrators' award. The foregoing enumeration of the rights waived by the Party are not intended to be exclusive, and the fact that any right is not specifically listed here shall have no effect on the fact that such right is waived by virtue of the agreement to arbitrate disputes as provided herein.

(31) The references to "Agreement" and "Memorandum of Understanding" are used interchangeable in this document.

Signature Page:

IN WITNESS WHEREOF, THE PARTIES HAVE EXECUTED THIS
MEMORANDUM AS OF THE DATE FIRST WRITTEN ABOVE.

THE COUNCIL OF UNIT OWNERS OF
CONDOMINIUM RESIDENCE I OF
FALLSGROVE, INC.

By: _____

Name: _____

Title: _____

THE COUNCIL OF UNIT OWNERS OF
CONDOMINIUM RESIDENCE II OF
FALLSGROVE, INC.

By: _____

Name: _____

Title: _____

Developer/Applicant

Lerner Enterprises, LLC, a Maryland Limited Liability Company

By: _____
Mark Lerner, Manager

Fallsgrove Associates, LLC, a Maryland Limited Liability Company

By: T.F. HOMES ASSOCIATES LIMITED PARTNERSHIP, a Maryland limited
partnership

By: T. F. HOMES, INC., a Maryland corporation, General Partner

By: _____(SEAL)
Name: _____

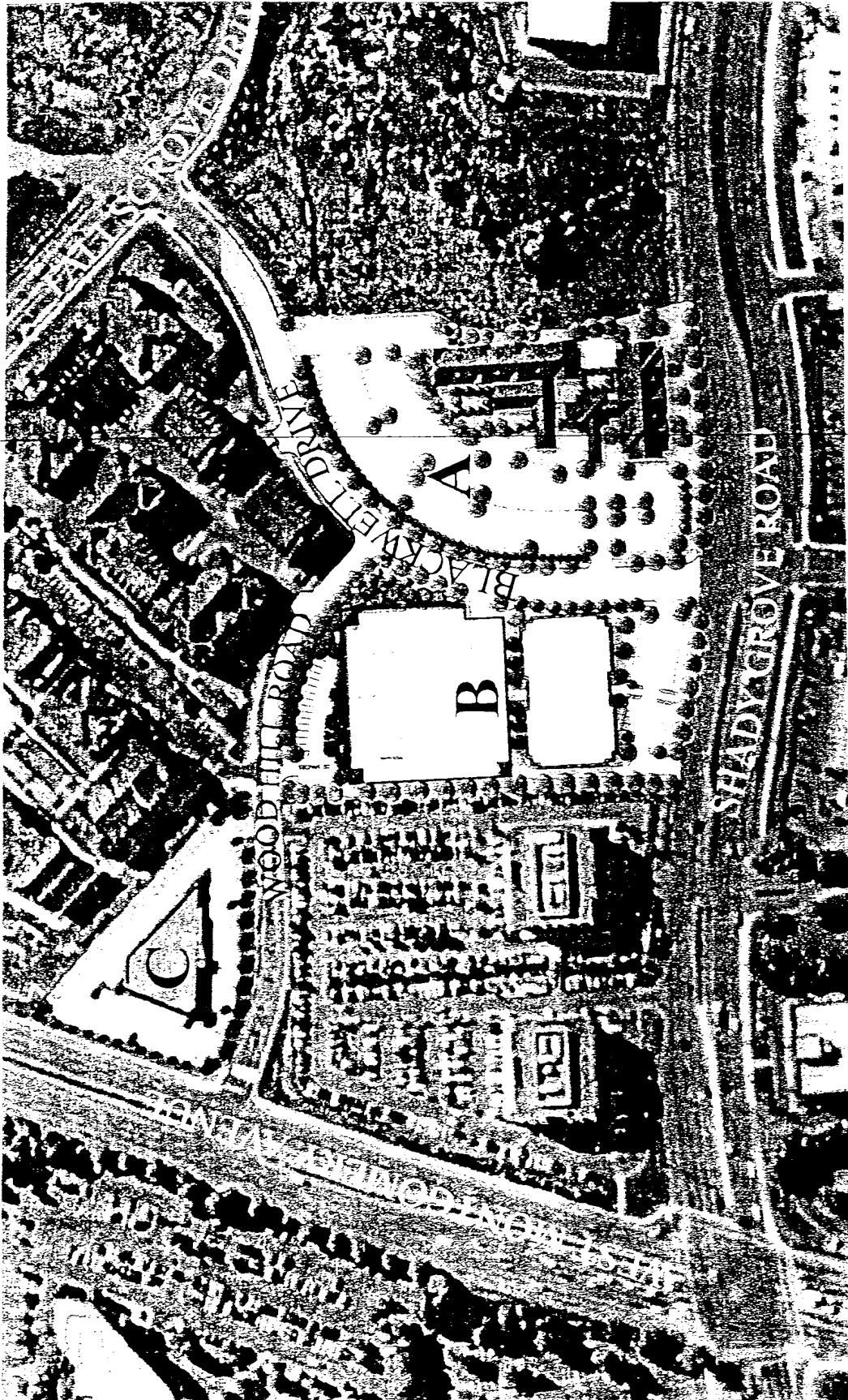


EXHIBIT "A"

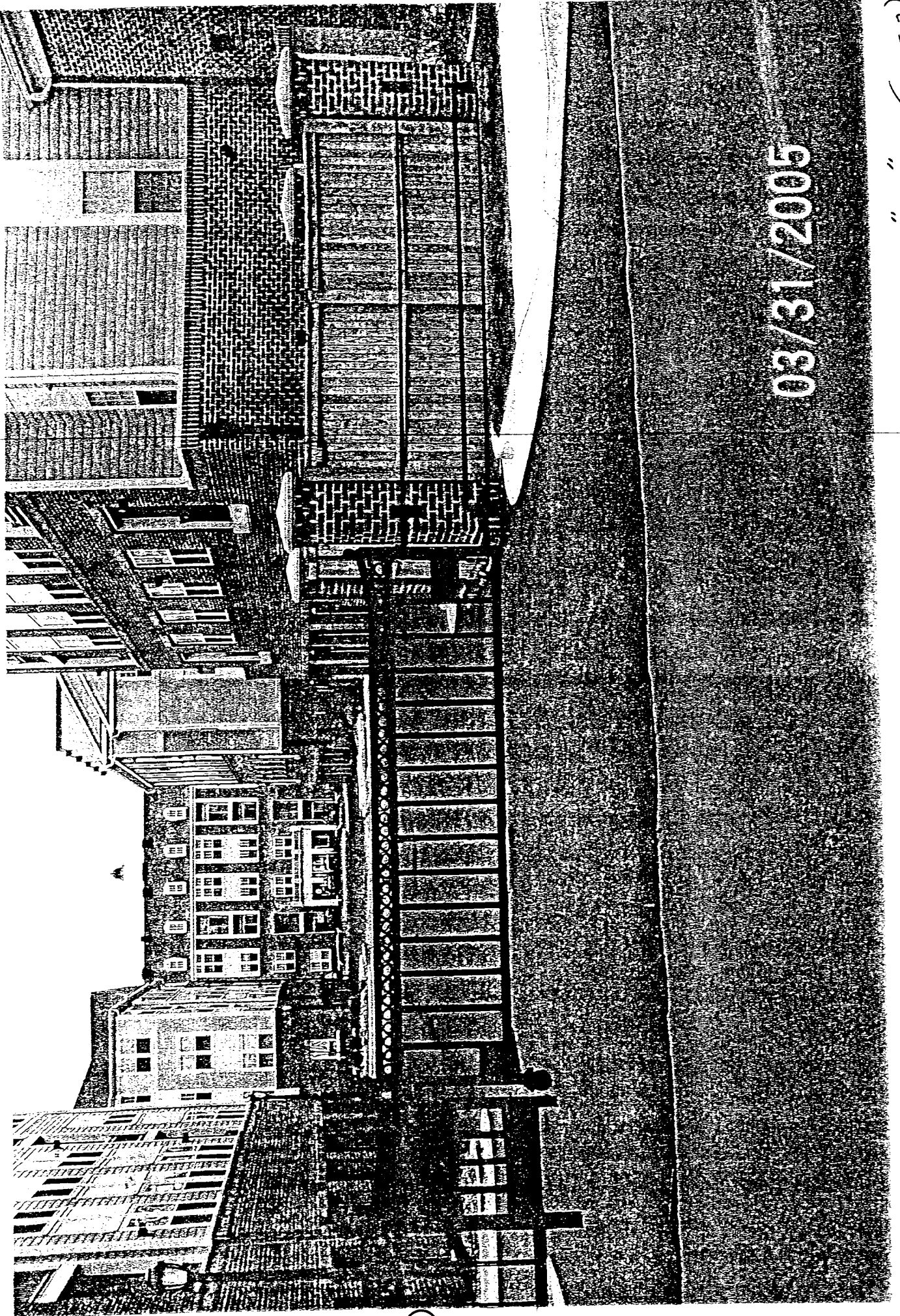
BLACKWELL DRIVE

WOODHILL ROAD

Fallstrove Drive

--- DENOTES ARE OF PROPOSED FENCE.

EXHIBIT "B"

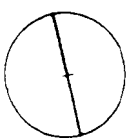
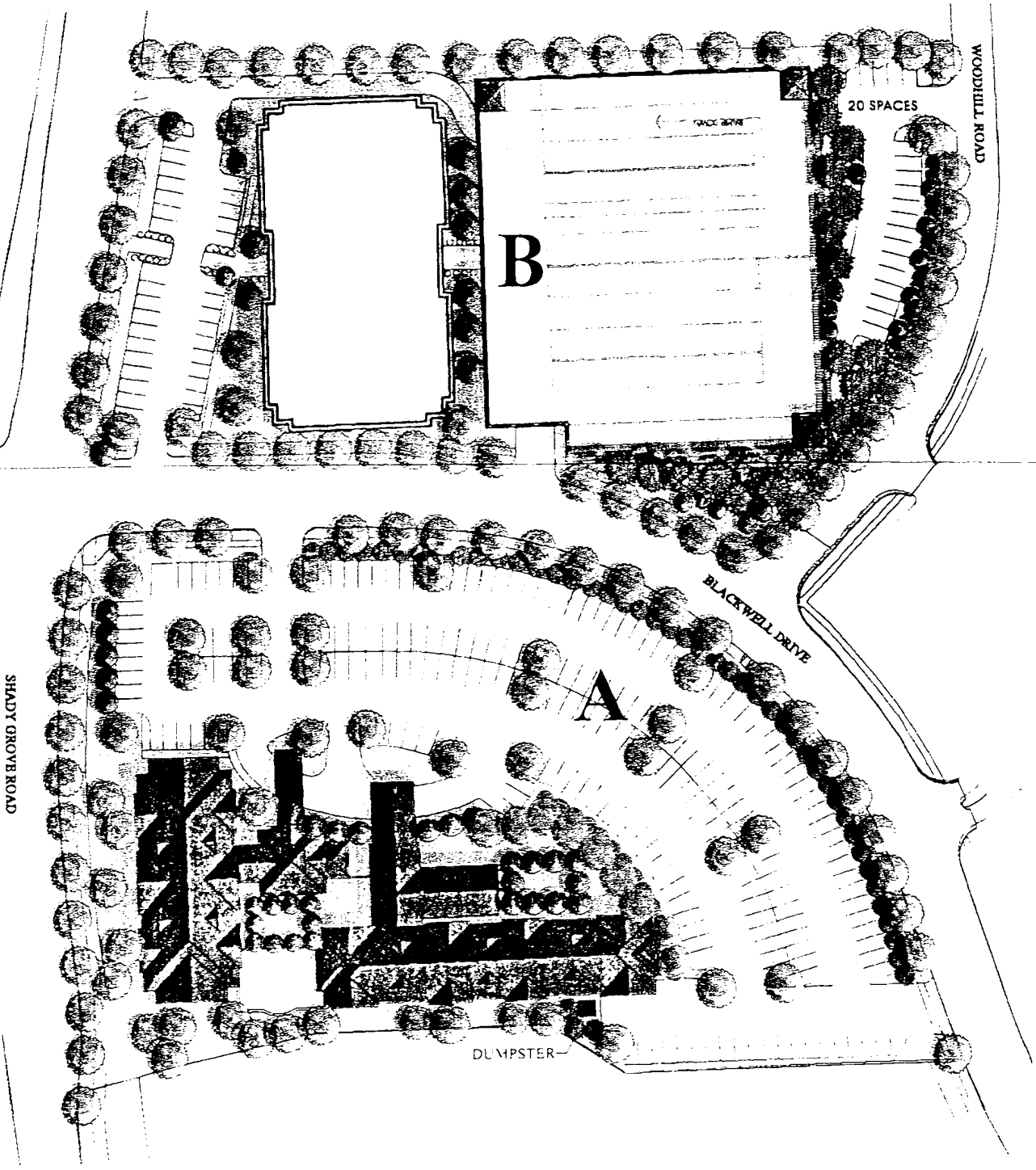


03/31/2005

EXHIBIT "C" (10F2)

03/24/2005

EXHIBIT "C" (2 of 2)



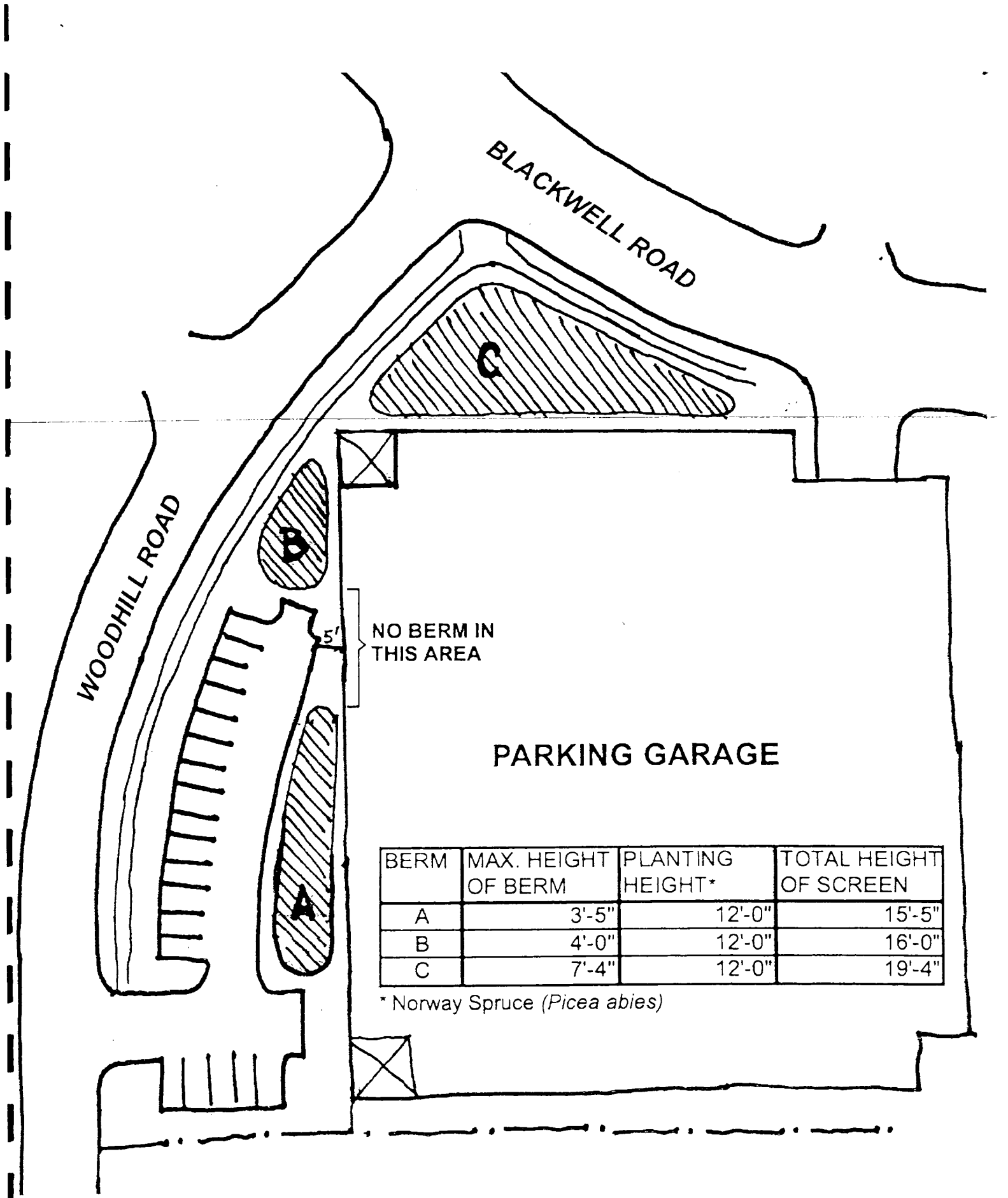
0' 50' 100' 200'

LEGEND

- CANOPY TREES
- EVERGREEN TREES
- ORNAMENTAL TREES

LERNER

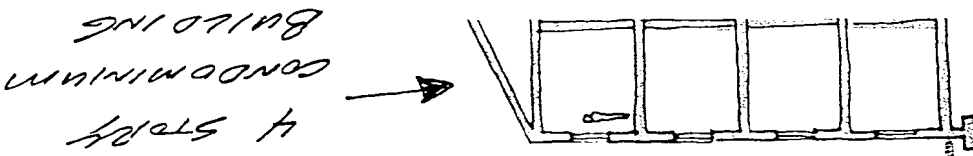
PARKER RODRIGUEZ, INC.
URBAN DESIGN LANDSCAPE ARCHITECTURE
1111 LEXINGTON AVENUE, SUITE 1000, NEW YORK, NY 10017-4803
PHONE 212 512 1000 FAX 212 512 1001



BERM	MAX. HEIGHT OF BERM	PLANTING HEIGHT*	TOTAL HEIGHT OF SCREEN
A	3'-5"	12'-0"	15'-5"
B	4'-0"	12'-0"	16'-0"
C	7'-4"	12'-0"	19'-4"

* Norway Spruce (*Picea abies*)

EXHIBIT "E"
(2 of 2)



4 STORY
CONDOMINIUM
BUILDING

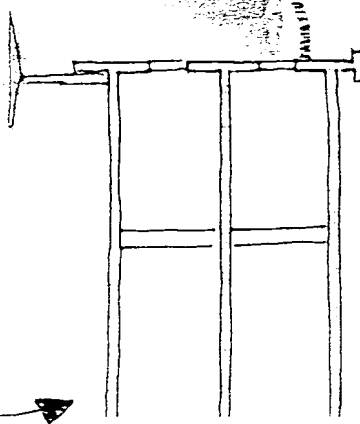
SPRAYER
WOOD-LIKE
TREES

FLOWERING
TREES

LANDSCAPE
WITH EVERGREEN
TREES

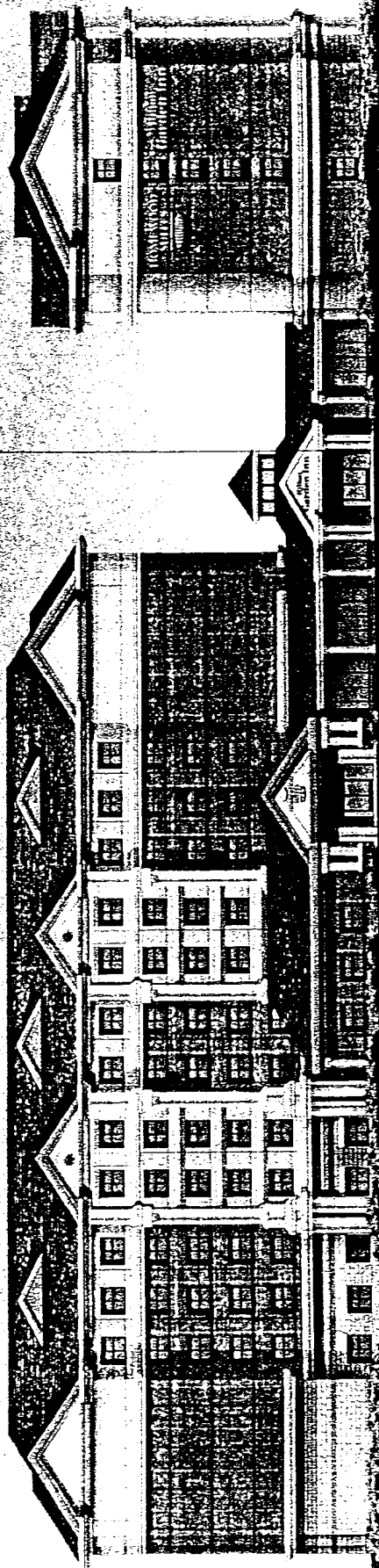
DECIDUOUS
TREES

LEVEL
GRASS
PARKING



3

CONDOMINIUM GUEST
PARKING, 20 SPACES
ON PARKER B.



HILTON GARDEN INN / HOMEWOOD SUITES
ROCKVILLE, MARYLAND
HOMEWOOD SUITES FRONT ELEVATION



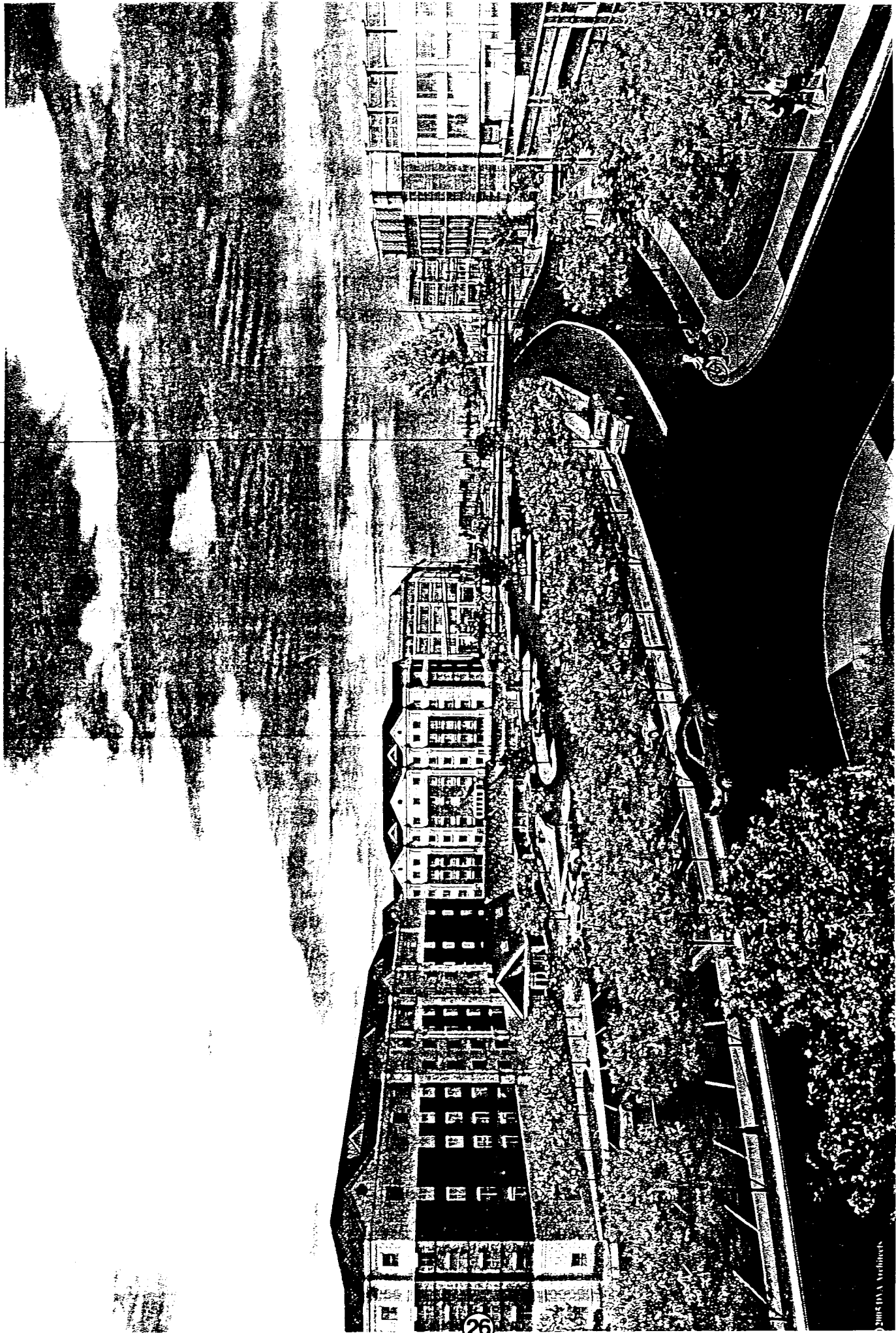
GORDON & GREENBERG
ARCHITECTS

EXHIBIT "F"

ADDITIONAL ILLUSTRATIVES

FOR

PLANNING COMMISSION CONSIDERATION

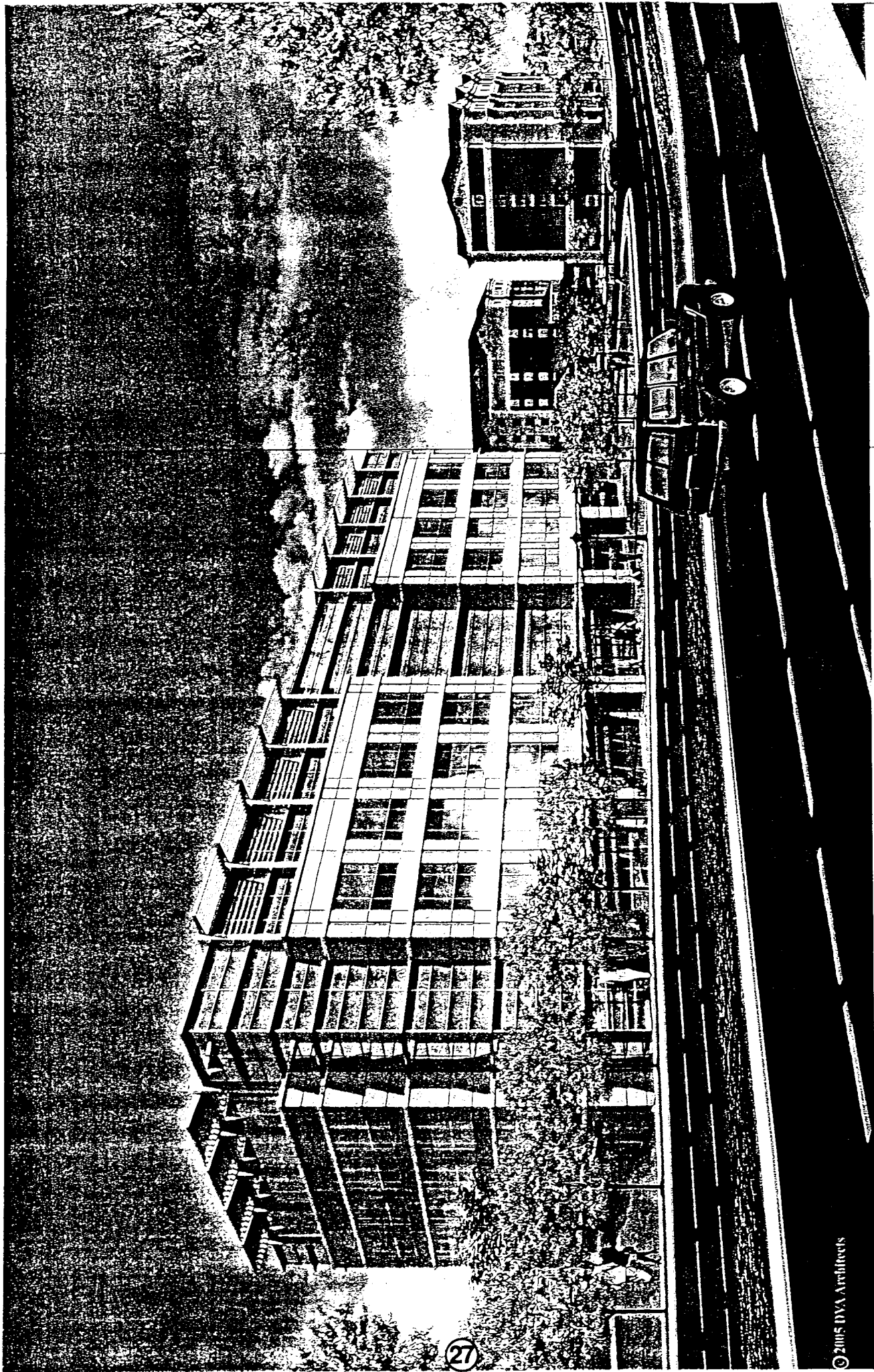


DVA ARCHITECTS, L.L.C.
 ARCHITECTS • PLANNING • INTERIORS
 1000 E. 10TH AVE. SUITE 1000
 DENVER, CO 80202

FALLSGROVE
 5 story office building & hotel - Perspective view A

Proposed Amendment
 Illustrative

of Rockville, Maryland



FALLSGROVE

5 story office building & Hotel - Perspective view C

DVA ARCHITECTS, L.L.C.
ARCHITECTS - PLANNING - INTERIORS
100 EAST HANOVER STREET, SUITE 1000, BALTIMORE, MD 21201
PH: 410.396.1515 FAX: 410.396.1516

© 2005 DVA Architects



© 2004 DVA Architects

City of Rockville, Maryland

FALLSGROVE

3 story & 3 story office building - Perspective view A

DVA ARCHITECTS, L.L.C.
 10000 Falls Grove Road
 Suite 100
 Rockville, Maryland 20854
 Phone: 301.261.1111
 Fax: 301.261.1112
 Website: www.dvaarchitects.com

Approved Fallsgrave Density & Uses

- 1530 Residential Units
- 150,000 Square Feet of Retail
- 950,000 Square Feet of Office / R&D
- 10,000 Square Feet of Ancillary Retail within Office Development
- Office Building Heights up to 125 Feet

Traffic and Parking Comparisons

Use	Parking	Morning Trips	Evening Trips
200 Room Hotel	220 Spaces	116	124
150,000 SF Office	600 Spaces	286	298

Fallsgrove Marketing Brochure

FALLSGROVE

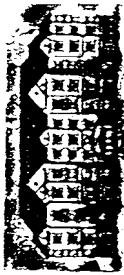
fallsgrove.com

Luxury Condominiums
by the Foxitt/Hartman Venture



These luxury condominiums are located in the heart of the Fallsgrove community, offering a prime location for residents. The building features a modern design with large windows and a secure entrance. Residents will enjoy a variety of amenities, including a swimming pool, fitness center, and clubhouse. The location is ideal for those who want to be close to the city while enjoying a peaceful neighborhood.

Apartment Homes
by JPI



These apartment homes are located in the heart of the Fallsgrove community, offering a prime location for residents. The building features a traditional design with a covered porch and a secure entrance. Residents will enjoy a variety of amenities, including a swimming pool, fitness center, and clubhouse. The location is ideal for those who want to be close to the city while enjoying a peaceful neighborhood.

Fallsgrove Village Center
by Lerner Enterprises



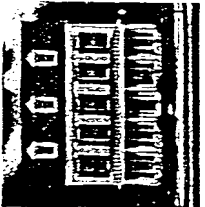
This modern commercial building is located in the heart of the Fallsgrove community, offering a prime location for businesses. The building features a glass facade and a central entrance, making it an ideal location for a variety of businesses. The location is ideal for those who want to be close to the city while enjoying a peaceful neighborhood.

Single Family Homes
by Eakin/Youngentub Associates



These single family homes are located in the heart of the Fallsgrove community, offering a prime location for residents. The homes feature a gabled roof and a covered porch, making them an ideal choice for those who want to be close to the city while enjoying a peaceful neighborhood.

Patio Single Family Homes
by Eakin/Youngentub Associates



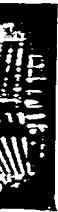
These patio single family homes are located in the heart of the Fallsgrove community, offering a prime location for residents. The homes feature a patio and a covered porch, making them an ideal choice for those who want to be close to the city while enjoying a peaceful neighborhood.

Two Level Condominiums
by Pullie Homes



These two level condominiums are located in the heart of the Fallsgrove community, offering a prime location for residents. The building features a modern design with large windows and a secure entrance. Residents will enjoy a variety of amenities, including a swimming pool, fitness center, and clubhouse. The location is ideal for those who want to be close to the city while enjoying a peaceful neighborhood.

Class "A" Office Space
by Lerner Enterprises



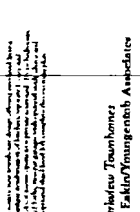
This modern office building is located in the heart of the Fallsgrove community, offering a prime location for businesses. The building features a glass facade and a central entrance, making it an ideal location for a variety of businesses. The location is ideal for those who want to be close to the city while enjoying a peaceful neighborhood.

Village Center Townhomes
by Eakin/Youngentub Associates



These village center townhomes are located in the heart of the Fallsgrove community, offering a prime location for residents. The townhomes feature a modern design with large windows and a secure entrance. Residents will enjoy a variety of amenities, including a swimming pool, fitness center, and clubhouse. The location is ideal for those who want to be close to the city while enjoying a peaceful neighborhood.

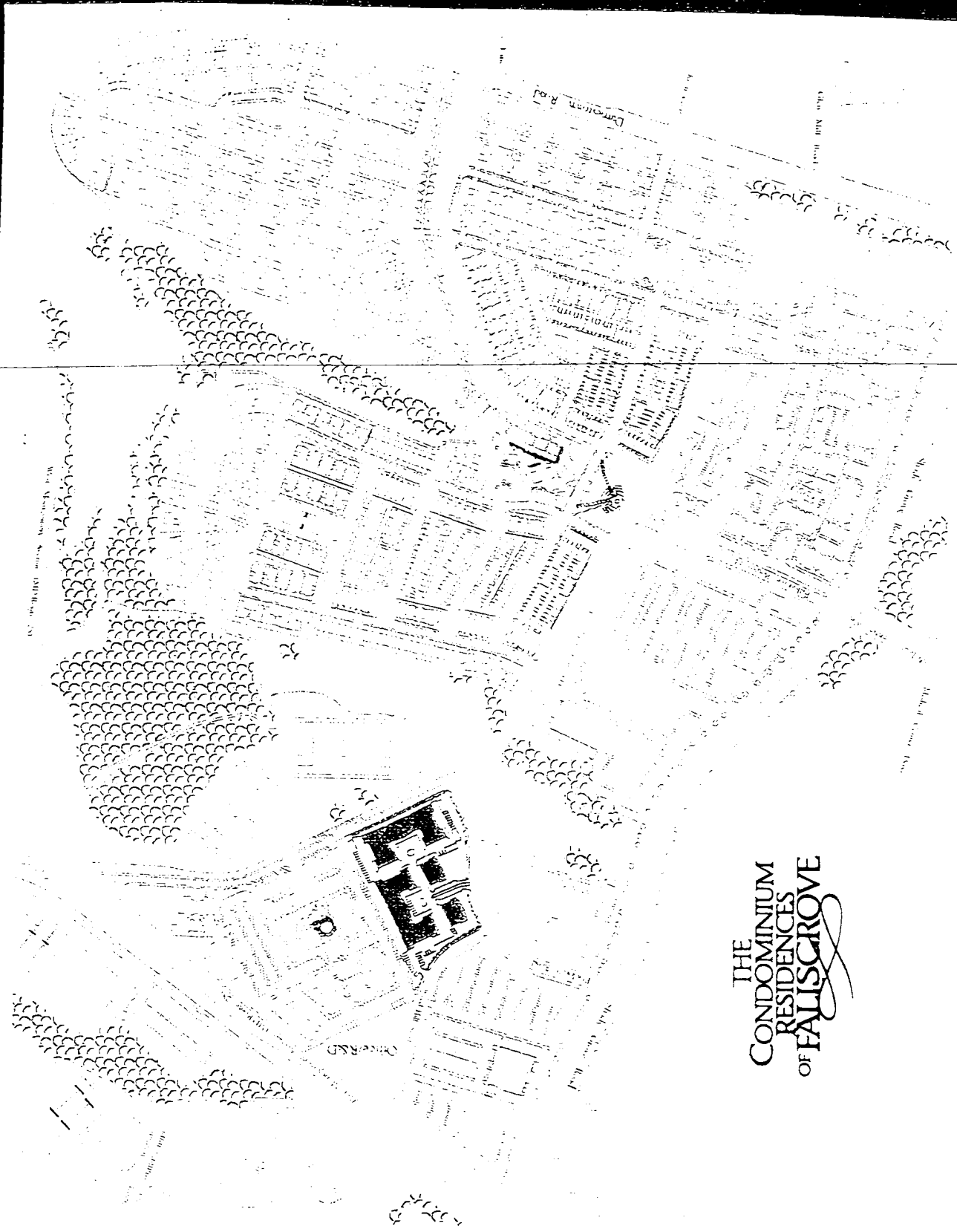
Two Level Patio Townhomes
by Eakin/Youngentub Associates



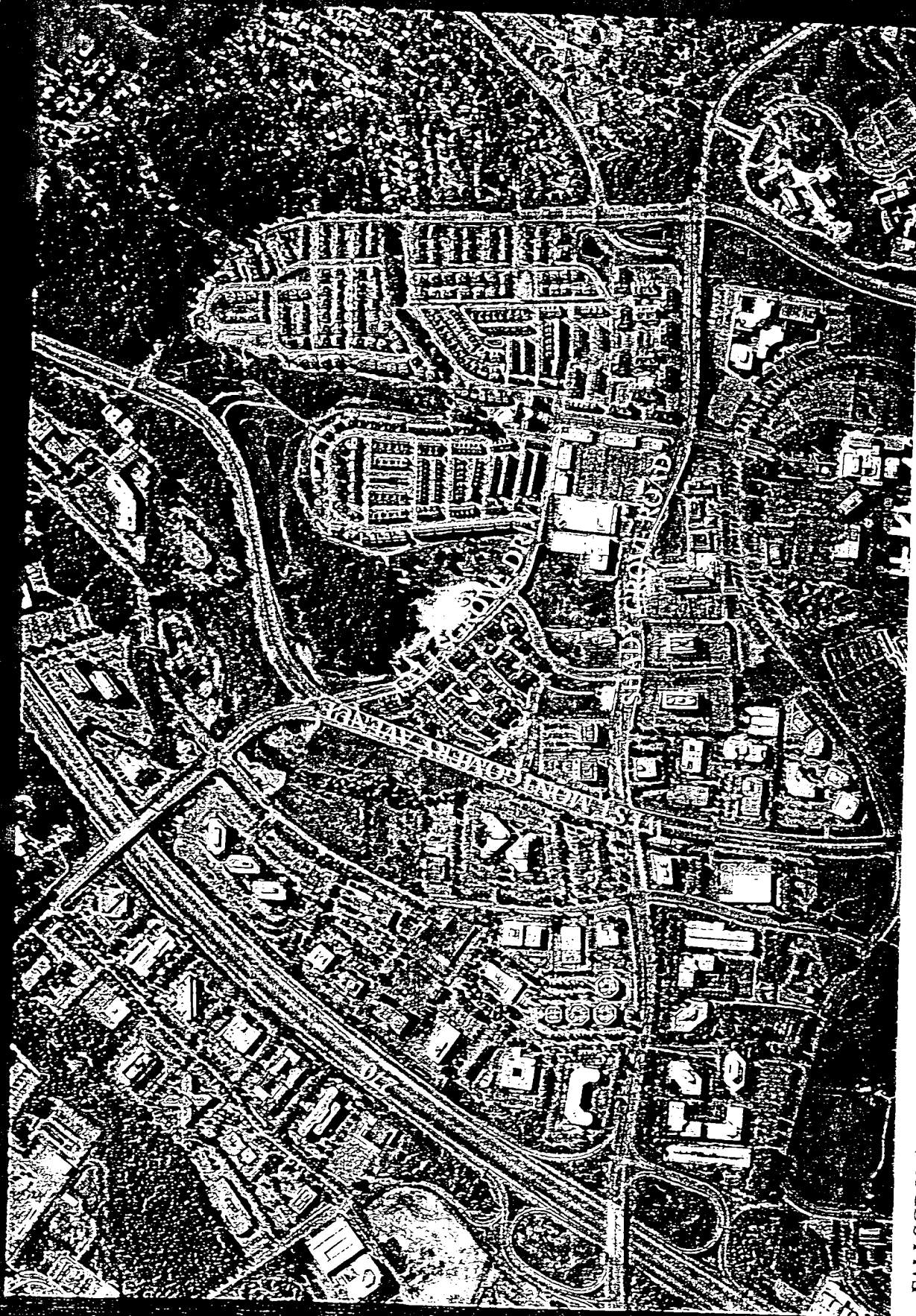
These two level patio townhomes are located in the heart of the Fallsgrove community, offering a prime location for residents. The townhomes feature a modern design with large windows and a secure entrance. Residents will enjoy a variety of amenities, including a swimming pool, fitness center, and clubhouse. The location is ideal for those who want to be close to the city while enjoying a peaceful neighborhood.

Parkside Townhomes
by Eakin/Youngentub Associates





THE
CONDOMINIUM
RESIDENCES
OF FALLSGROVE



FALLSGROVE

VICINITY MAP

DVA

DONNALLY VILCIC ASSOCIATES, L.L.C.

ARCHITECTURE • PLANNING • INTERIORS

400 PROFESSIONAL DRIVE, SUITE 100, GAITHERSBURG, MD 20878

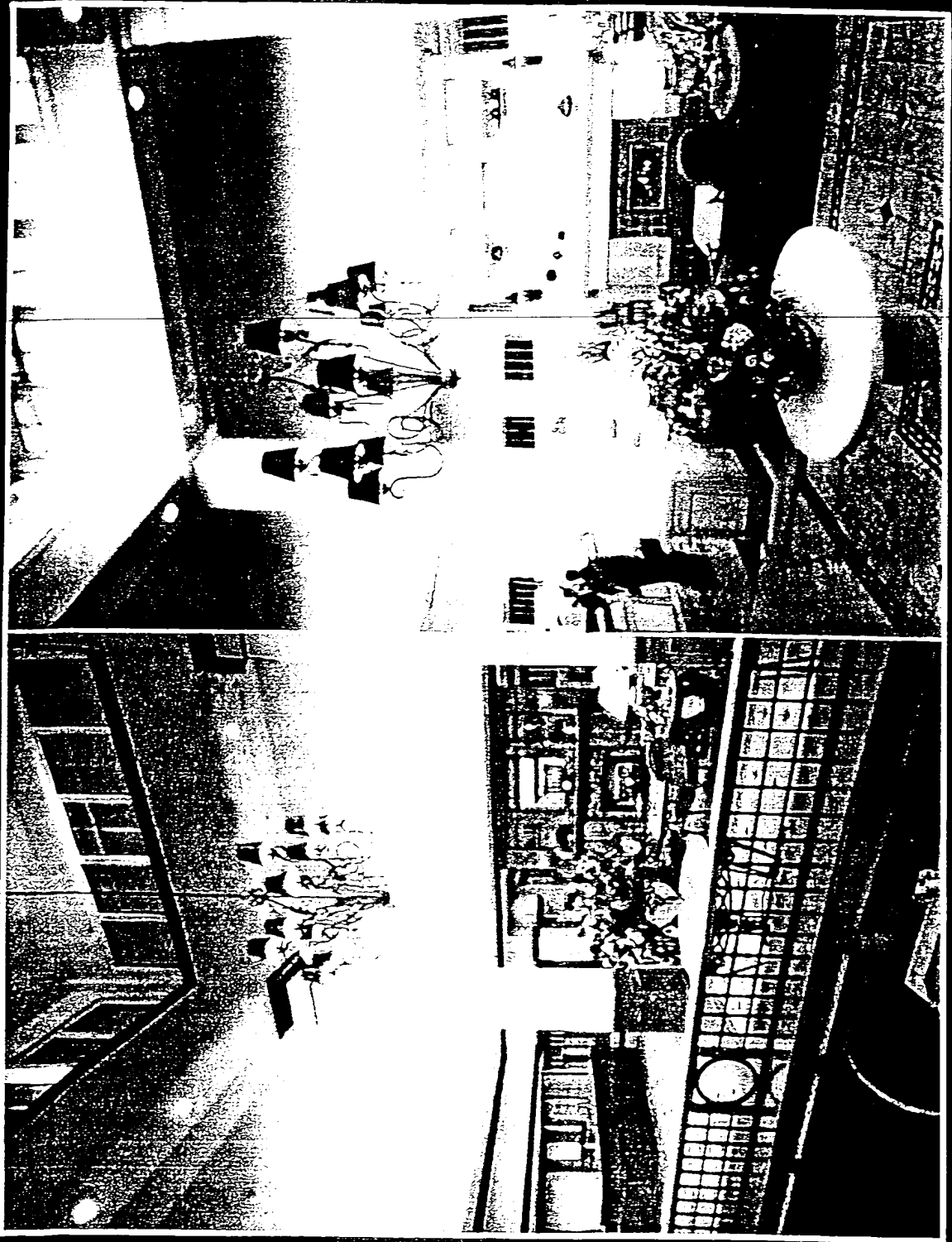
TEL (301) 590-4400 FAX (301) 590-4410 WWW.DVA-ARCH.COM

The
power
of the
Hilton
name...

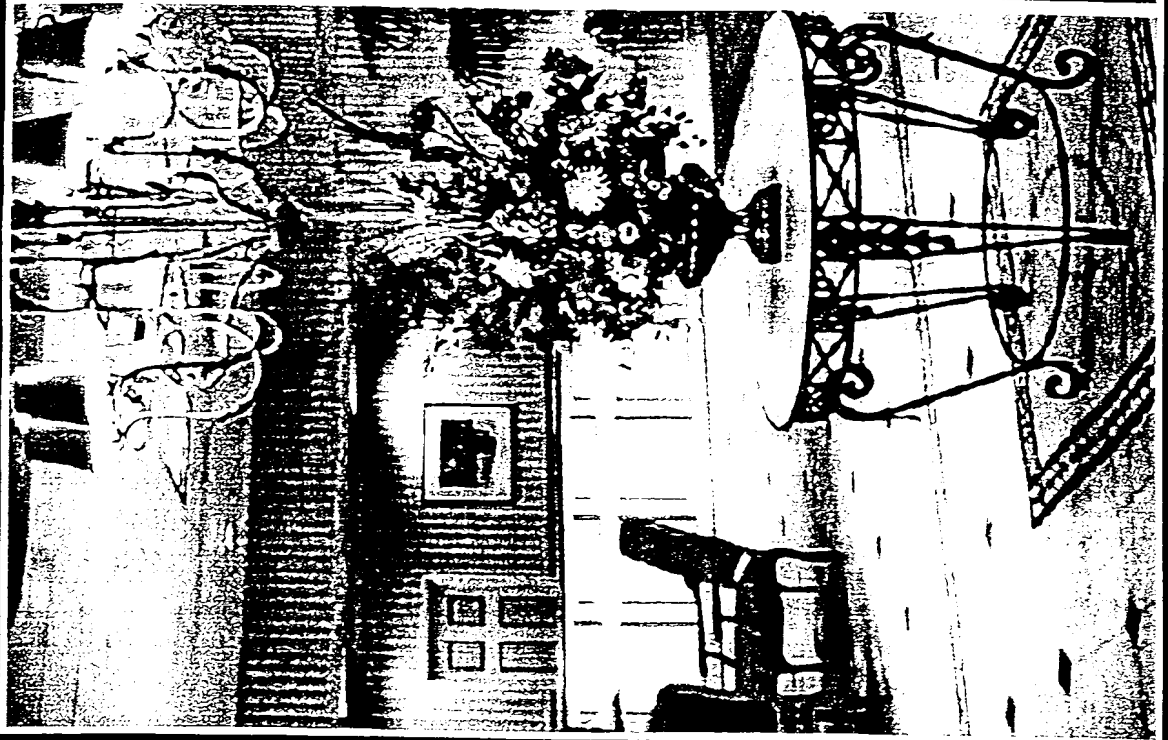
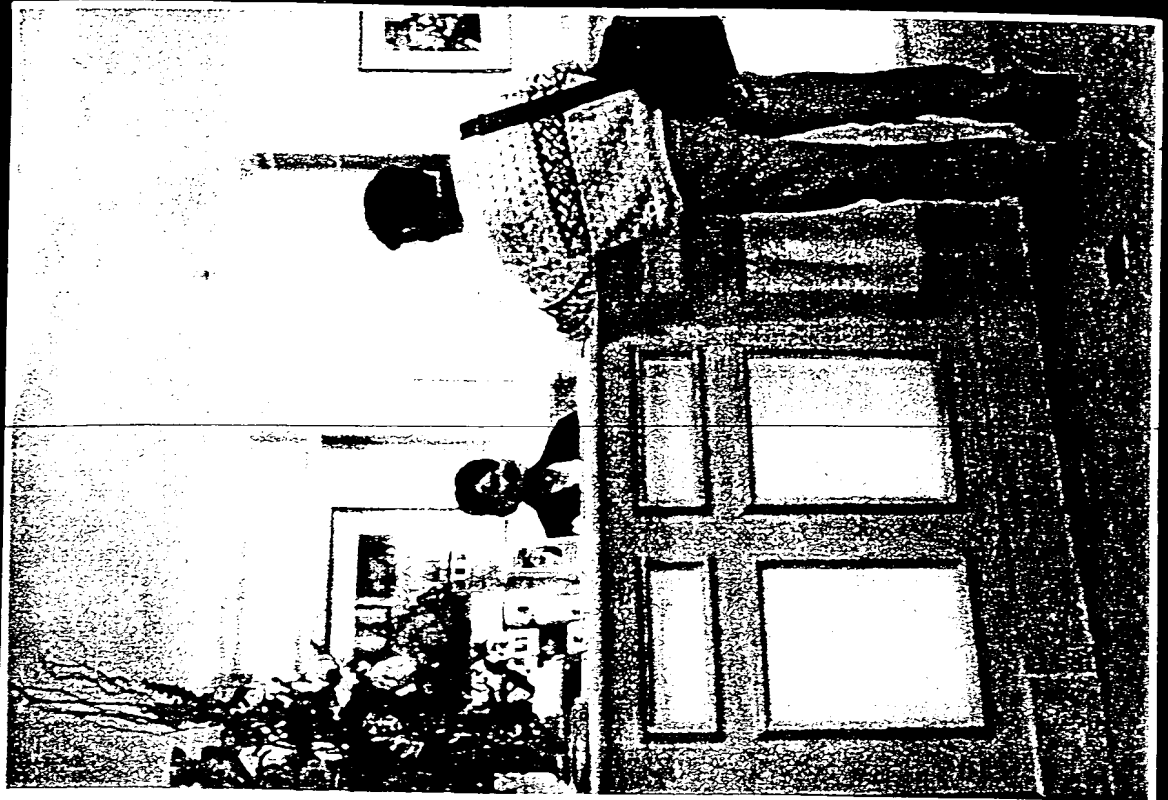


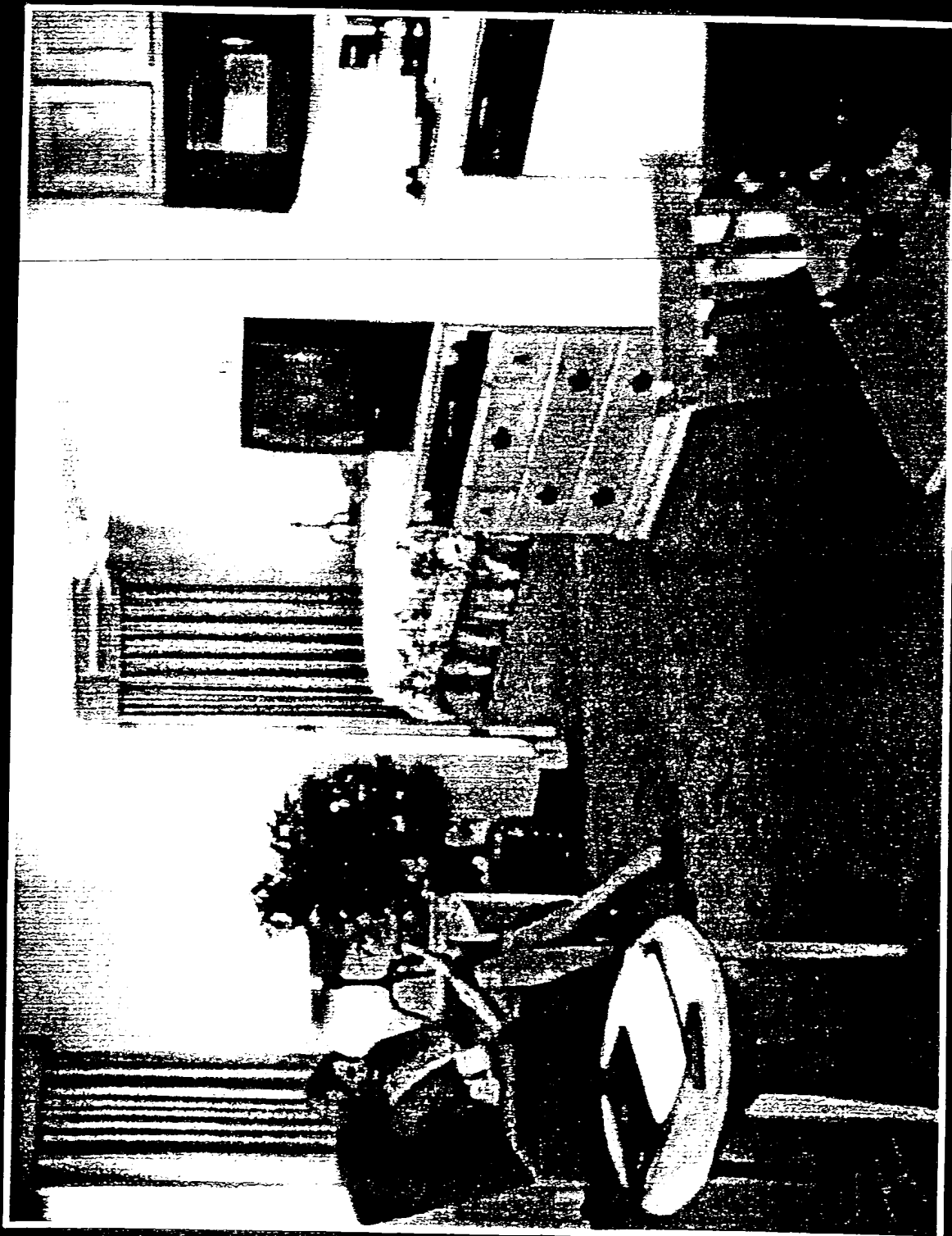
HILTON

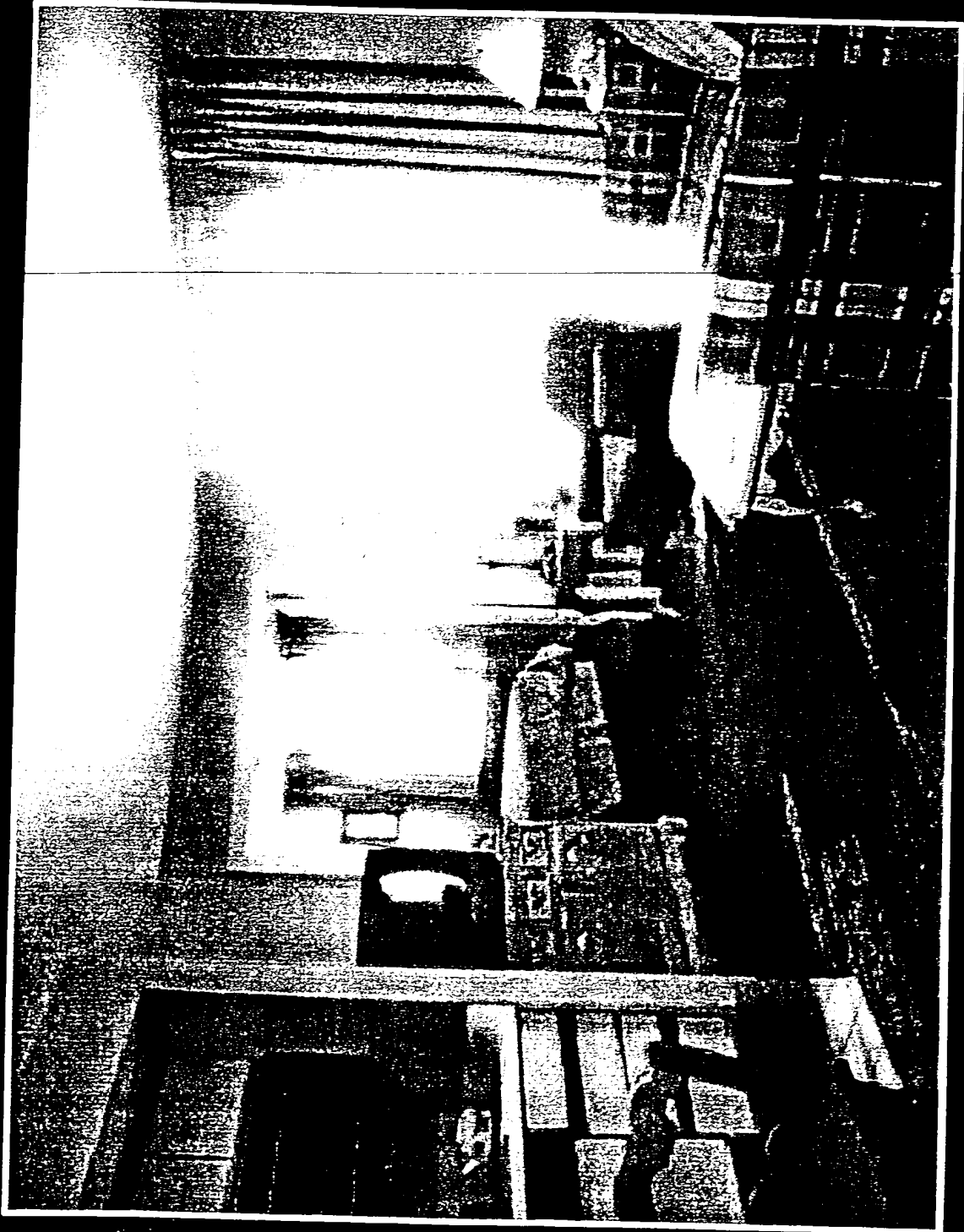




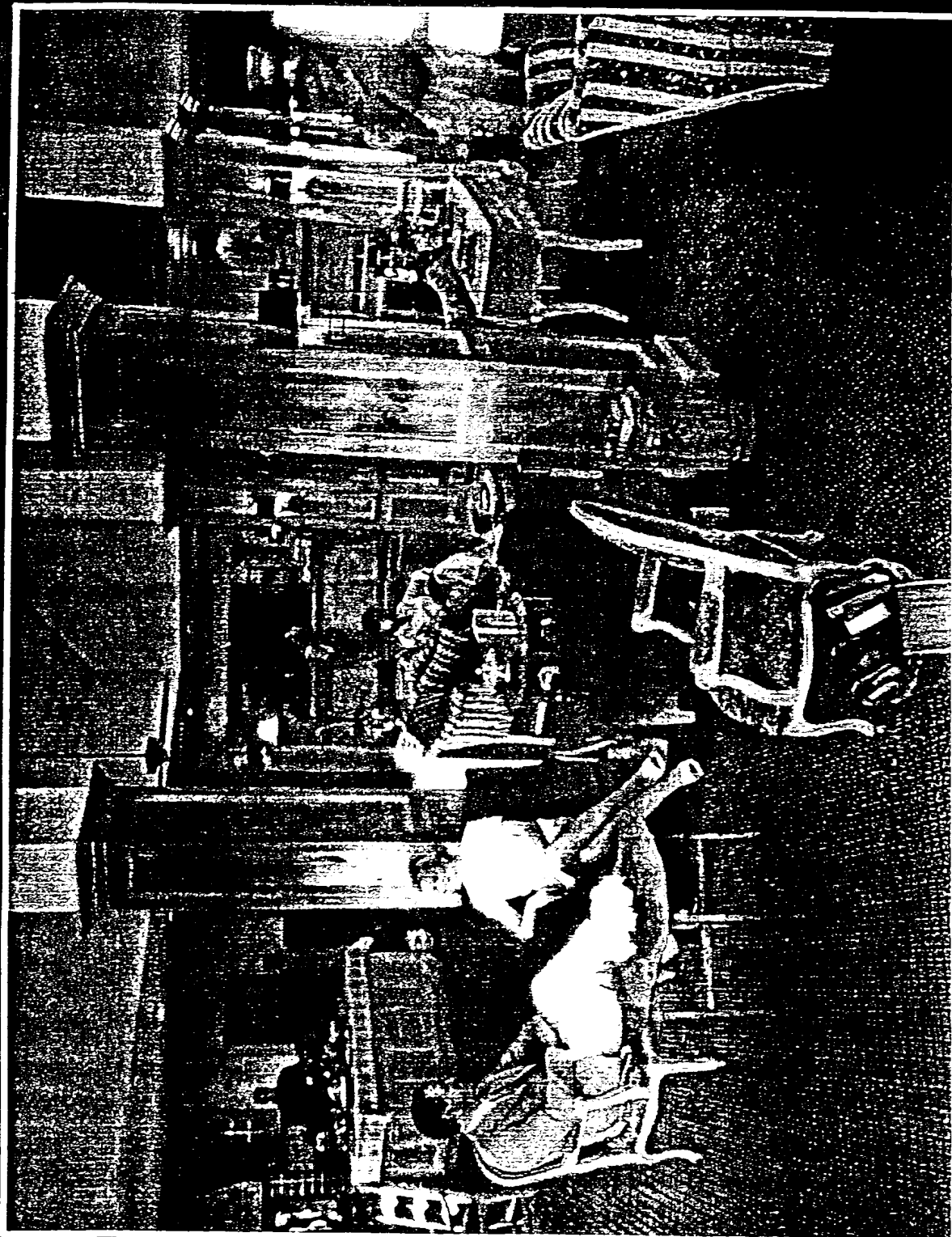
 Hilton

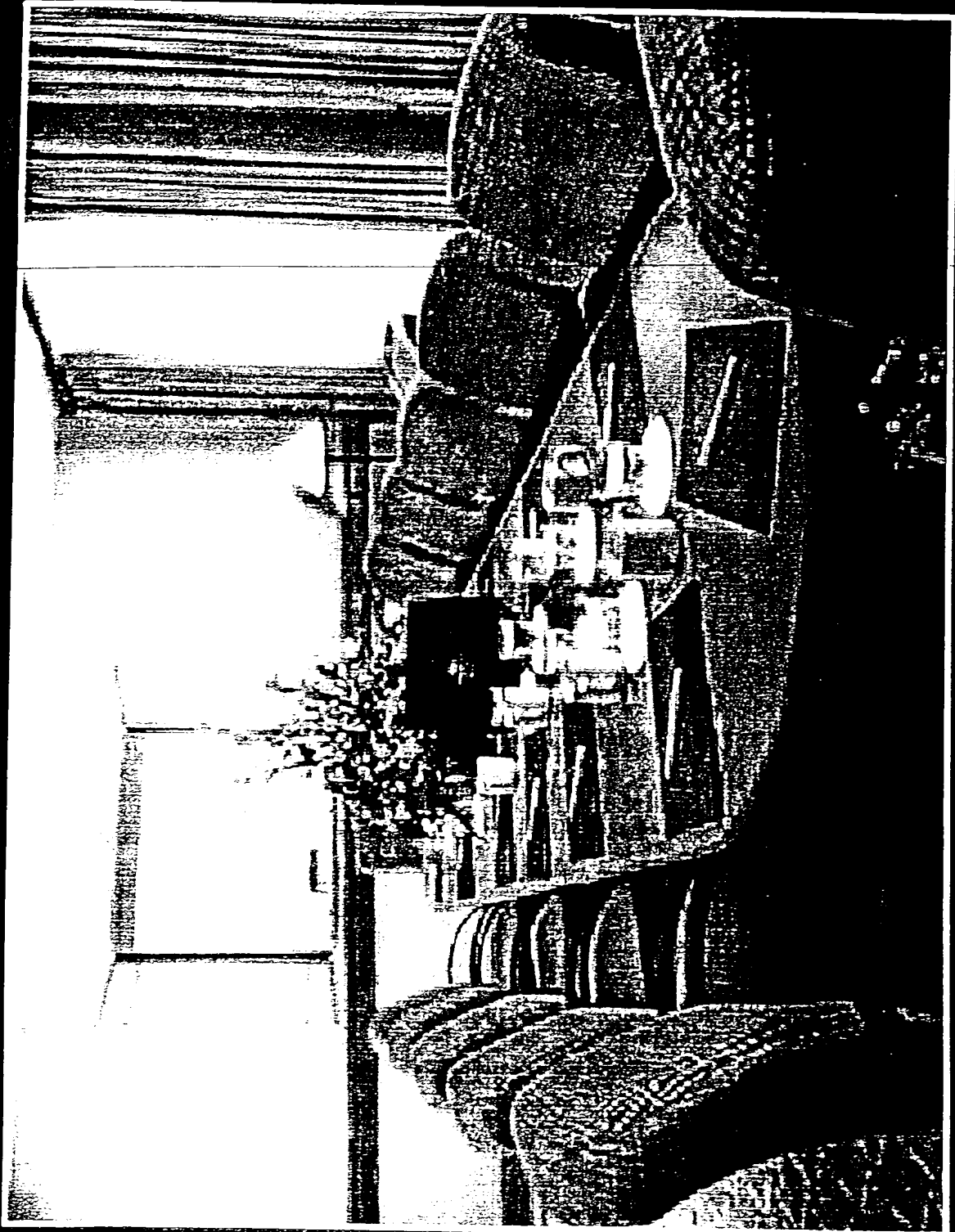






 Hilton





☒ City Clerk
☒ City Manager

☐ Council Support Specialist
☒ Other Art Chambers

1211
ATTACHMENT 4
RECEIVED
CITY CLERK'S OFFICE

Brenda Bean/RKV
04/15/2005 11:28 AM

To Nsklute@aol.com
cc Mayor_Council, Art Chambers/RKV, 2005 APR 15 AM 11:41
bcc
Subject Re: Rockville Mayor/City Council Meeting, May 2,
2005--Falls Grove Concept Plan

Dear Mr. Sklute,

Thank you very much for your follow up email explaining the documents you dropped off with this office earlier today. The documents you provided, along with your email, will be reviewed by the Mayor and Council and marked as an exhibit for incorporation into the official file.

We appreciate your interest in this project and look forward to seeing you at the public hearing on May 2, 2005 at 7:00 pm.

Brenda F. Bean
Deputy City Clerk
City of Rockville
111 Maryland Avenue
Rockville, Maryland 20850
240-314-8281
email: bbean@rockvillemd.gov
fax: 240-314-8289

Nsklute@aol.com



Nsklute@aol.com
04/15/2005 11:25 AM

To bbean@rockvillemd.gov
cc
Subject Rockville Mayor/City Council Meeting, May 2,
2005--Falls Grove Concept Plan

Exhibit # 1
Subject: Falls Grove CPD1999-
0004
Public Hearing Date: 5/2/05

Dear Ms. Bean

This morning, April 15, 2005, I furnished the Office of the Rockville City Clerk six (6) copies of an agreement dated 13 April 2005, that is directly related to the Proposed Amendment to the Falls Grove Concept Plan to be considered at the Mayor /City Council meeting on May 2, 2005. I respectfully request that this document be made an exhibit for the meeting, and that it be included in the record. The Agreement consists of 13 pages and Exhibits A through F.

Parties to the agreement are the Developer/Applicant and the two associations representing 97 of the 119 condominiums at the Condominium Residences of Falls Grove. The agreement was discussed, in part, during the April 13, 2005, meeting of the Rockville Planning Commission, when the Proposed Amendment to the Falls Grove Concept Plan was addressed.

There are persons scheduled to speak at the May 2nd meeting who are very supportive of the proposed concept plan amendment, including myself, who can address questions concerning the contents of the agreement. Thank you for your assistance.

Very truly,

Nolan Sklute
President
Condominium Residences I of Fallsgrove
9405 Blackwell Road #13
Rockville, MD 20850
nsklute@aol.com
301-424-5160
202-421-5224 (C)

This email may contain confidential or privileged information. If you are not the intended recipient, please advise by return email and delete immediately without reading or forwarding to others.

AGREEMENT

* * *

RECEIVED
CITY CLERK'S OFFICE
2005 APR 15 AM 10:09

This Agreement (hereafter "Agreement") made this 13th day of April, 2005, by and between SGB Office Group, LLC, a Maryland Limited Liability Company, an affiliate of Lerner Enterprises, LLC, (hereafter referred to as "Developer/Applicant"), and Condominium Residences I of Fallsgrove, Inc. (hereafter referred to as "CR I"), and Condominium Residences II of Fallsgrove, Inc. (hereafter referred to as "CR II"),

WITNESSETH

WHEREAS, the Developer/Applicant was one of the developers of real property within a comprehensive planned development of approximately 253.94 acres, more or less, known as Fallsgrove within the corporate limits of the City of Rockville, Maryland,

WHEREAS, the development of real property within Fallsgrove must be in accordance with a Concept Plan adopted by the Mayor and Council of the City of Rockville on February 22, 2000, identified as Resolution No. 1-00 (hereafter the "Fallsgrove Concept Plan"),

WHEREAS, the development of real property as authorized by the Fallsgrove Concept Plan require approval of Detailed Applications by the City of Rockville.

WHEREAS, SGB Office Group, LLC, is the developer of a parcel of land within Fallsgrove which is denoted on Exhibit A to this Agreement as geographic area "A", and which is identified on Exhibit 18, entitled "Land Use Concept Plan," to Resolution No. 1-00 as "Office/R&D #6" (hereafter "Parcel A"),

WHEREAS, SGB Office Group, LLC, is the developer of a parcel of land within Fallsgrove which is denoted on Exhibit A to this Agreement as geographic area "B", and which is identified on Exhibit 18, entitled "Land Use Concept Plan," to Resolution No. 1-00 as "Office/R&D #5" (hereafter "Parcel B"),

WHEREAS, Developer/Applicant is a member of Fallsgrove Associates, LLC,

the owner of a parcel of land within Fallsgrove which is denoted on Exhibit A to this Agreement as geographic area "C", and is, generally, a triangular shaped parcel of land in the southwestern quadrant of the intersection of Wood Hill Drive and West Montgomery Avenue (Maryland Route 28) (hereafter "Parcel C"),

WHEREAS, the type and form of development proposed for Parcel A and Parcel C by Developer/Applicant necessitate an amendment to the Fallsgrove Concept Plan,

WHEREAS, the Fallsgrove Concept Plan may be amended under the provisions of the Zoning Ordinance of the City of Rockville by the Mayor and Council of the City of Rockville after a recommendation from the Planning Commission of the said City,

WHEREAS, the Fallsgrove Associates has filed with the City of Rockville an application to amend the Fallsgrove Concept Plan to permit development of Parcel A and Parcel C as desired by the Developer/Applicant which is identified as "CPD1999-0004B" (hereafter "Application CPD 1999-0004B"),

WHEREAS, the Developer/Applicant wishes to have the support of the residents of the Condominium Residences of Fallsgrove for Application CPD1999-0004B to amend Fallsgrove Concept Plan to, among other things, authorize development of Parcels A, and C as desired by the Developer/Applicant,

WHEREAS, the Developer/Applicant has made certain assurances and commitments to the Condominium Residences I and Condominium Residences II of Fallsgrove in exchange for the CR I and CR II support for Application DPD1999-0004B and the subsequent Detailed Application,

WHEREAS, the CR I and CR II agree to support Application CPD1999-0004B and the subsequent Detailed Application provided the Developer/Applicant agrees to the assurances and commitments provided for herein,

NOW, THEREFORE, upon consideration of the foregoing and the promises contained herein, the receipt and adequacy of which is hereby acknowledged, the parties do hereby agree as follows:

1. The provisions of this Agreement concerning land use matters set forth herein are subject, in each instance, to the review and approval of the City of Rockville pursuant to its rules and regulations.

2. This Agreement shall be binding upon each of the parties hereto, their employers, agents, successors, and assigns, except that the tenants of any commercial property within the Fallsgrove development shall not be bound by the responsibilities and obligations of Developer/Applicant provided for under this Agreement.

3. A. This Agreement and each and every provision contained herein, is expressly contingent, upon the following:

(i) approval of Application CPD1999-0004B (and the expiration of all applicable appeal periods) providing for a hotel on Parcel A and an office use on Parcel C, both identified on attached Exhibit "A";

(ii) approval of the Detailed Application for a Hotel building(s) on Parcel A (and the expiration of all applicable appeal periods);

(iii) approval of the Detailed Application for an Office Building on Parcel B (and the expiration of all applicable appeal periods);

(iv) approval of the Detailed Application for an Office Building on Parcel C (and the expiration of all applicable approval periods);
and

(v) development of Parcel A in accordance with Application CPD1999-0004B and the Detailed Applications for hotel use.

B. In the event the items identified above in subparagraphs (i), (ii), (iii), (iv) and (v) do not occur, Developer/Applicant shall have no responsibilities

or obligations under this Agreement and said Agreement shall become null and void.

C. Notwithstanding the foregoing, in the event item (i) as it pertains only to the office development on Parcel C, item (iii) or item (iv) identified above in paragraph 3A do not occur, all obligations of Developer/Applicant under this agreement shall remain in effect only if Developer/Applicant determines in its sole and absolute discretion to move forward with the development of Parcel A in accordance with the approved Detailed Applications set forth above in accordance with Application CPD1999-0004;

D. Notwithstanding any of the foregoing, in the event the development of Parcel A proceeds in accordance with Application CPD1999-0004, all of the terms of this agreement remain in full force and effect and are binding on the parties.

4. Provided nothing at law or by rule, regulation or ordinance would prevent the Developer/Applicant from undertaking such work on an immediate basis, the Developer/Applicant agrees that prior to the commencement of any work on any of the buildings included in any of the approved Detailed Applications for Parcel A or B, work shall commence on the expansion of the brick/wrought iron wall-fence that sporadically appears along certain sections of the perimeter of the Condominium Residences of Fallsgrove in several areas marked on Exhibit B (back of Buildings I and II from Wood Hill to Fallsgrove, between exterior garages on the Blackwell side of Building II, and certain sections along Wood Hill) and, in addition thereto, work shall commence on the installation of the wrought-iron traffic gates at the entrances to the Condominium Residences of Fallsgrove —the design to be developed in cooperation with the boards of directors of CR I and CR II, one illustration of which is shown on Exhibit C. (This matter should help alleviate security concerns, and requires city approval). All at no cost to the Condominium Residences of Fallsgrove or its residents. Installation of the aforesaid

traffic gates and wrought iron fence will be completed as expeditiously as possible. After installation of the foregoing improvements in this paragraph 4, CR I and CR II shall be responsible for the ongoing maintenance and repair of all such improvements, and the Developer/Applicant shall have no responsibility or liability for same.

5. Provided nothing has been initiated at law or by rule, regulation or ordinance that would prevent the Developer/Applicant from undertaking such work on an immediate basis, the Developer/Applicant agrees that prior to the commencement of any work on any of the buildings under any of the approved Detailed Applications for Parcel A or B, construction shall commence on a parking lot for 20 vehicles on Parcel B between the parking garage and Wood Hill Road for the exclusive use of the residences of the Condominium Residences and/or their guests, as shown on attached Exhibit D. Construction of the aforesaid parking lot will be completed as expeditiously as possible. All liability associated with the use of the lot, lighting, maintenance and repairs, and snow removal will be the responsibility of the Developer/Applicant.

6. The parking garage on Parcel B will not exceed two and one half levels above grade level as shown on Exhibit E, with any additional levels to be below grade.

7. The parking garage on Parcel B will be screened with a 3 to 7 foot berm (to the maximum extent feasible) and landscaped with evergreens as shown on attached Exhibit E. Additionally a lattice-work and evergreen arrangement will be installed along the edge of the garage roof line and in between the floors of the parking garage on the side facing Wood Hill Road. While the parking facility will not be invisible, its appearance will be significantly shielded from view and enhanced.

8. The height of the office building on Parcel B will not exceed five stories.

9. No entrance for the Office Building or parking structure on Parcel B will be located on Wood Hill Road. The only entrance on Wood Hill Road for Parcel B will be for the parking lot reserved exclusively for the use of the residents and/or guests of the Condominium Residences.

10. Developer/Applicant will pursue efforts to locate on Shady Grove Road an entrance into and/or an exit out of the parking structure on Parcel B, as shown on Exhibit A.

11. For a period of fifteen years, , from the date the office building on parcel B is completed and available for occupancy, Developer/Applicant will ensure that no daily parking fees are charged for use of the unreserved parking spaces in the parking structure serving Parcel B and that no more than 65% of such spaces shall be reserved pre-paid spaces.

12. The retail/restaurant uses in the Office Building on Parcel B will have front door entrances on Shady Grove Road only (with the corner spaces having emergency access points on the sides of the building if required by code and, except for food/restaurant uses and service oriented uses, such as a Red Door Salon, will not exceed 3,000 square feet for any one retail tenant. No convenience store such as 7/11 will be allowed.

13. The height of the Hotel on Parcel A to be limited to 6 stories, as depicted in documents attached to application and in attached Exhibit F.

14. Signage on the side of the Hotel facing Blackwell Road will be subdued and placed in locations to make it less obtrusive. Building signage on the side of the Hotel facing Blackwell Road will be as shown on attached Exhibit F and may be illuminated (not flashing, single channel internally illuminated and or rear illuminated (halo style) letters). Monument signage may be erected at the entrance to the Hotel closest to Shady Grove Road or on Shady Grove Road.

15. Landscaping along Blackwell Road on the side of the Hotel will be enhanced to offer a more attractive view for the condominium residents as shown on Exhibit D.

16. Entrances into the Hotel parking lot will be placed on Blackwell Road to cause the least amount of interference with traffic along Blackwell Road; on the one end, as close to Shady Grove Road as possible and on the other end, as close to the property

line as is possible, as shown on Exhibit D.

17. Nighttime security for the Hotel will be provided. The hotel staff will be made aware of the citizens concerns and will be available 24 hours a day, 7 days a week to address any situation that may arise. Every effort will be made to assure that the parking area remains quiet after hours, with any problems or complaints to be handled immediately by the Hotel Manager on duty.

18. Hotel meeting rooms will be limited in size not to exceed in total when combined together 3,000 square feet, so as to discourage use for large third party social events. The kitchen facility on site will not be sized to handle the food preparation needs of any large social events.

19. The Hotel dumpster will be located out of sight from Blackwell Road. It will be screened from view and will be located at the rear of the Hotel along the southern property line as shown on exhibit D, with the approval of the City.

20. No ancillary retail establishments, other than what is usual and customary in lobby shops associated with limited service hotels will be allowed in the Hotel. The restaurant and bar area within the Hotel will primarily serve the guests and invitees of the Hotel.

21. Every effort will be made, including signage, to preclude anyone associated with the Hotel from parking on Blackwell Road. In the event that it is determined that a Hotel employee or guest is parking on Blackwell Road, Developer will follow City and County laws and ordinances for its removal.

22. The residents of the Condominium Residences of Falls Grove will continue to have the opportunity to be involved in the review of Hotel interior and exterior for compliance with quality standards prior to and during the Rockville Detailed Plan Application process. The Developer/Applicant will notify the presidents of each of the association boards of directors of Condominium Residences I and II when information is ready for their review.

23. The Condominium Residences of Falls Grove, will be provided with an opportunity to review all parking area site lighting decisions prior to and during the Detailed Application process for compliance with this Agreement. This includes lighting in the Hotel parking lot and in the office building parking structure on Parcel B. Applicant intends to use downward directed lighting at the lowest possible candlelight that assures public safety concerns and no less than is required by code. The Developer/Applicant will notify the presidents of each of the association boards of directors of Condominium Residences I and II when information is ready for their review.

24. The Hotel will provide a generator to ensure electricity to a portion of the Hotel, which area will be available to the Falls Grove Community residents in case of an area-wide blackout.

25. Use of the Hotel pool and exercise facility by residents of the Condominium Residences of Falls Grove will be at no charge during the hours of 9:00 A.M. to 5:00 P.M.

26. Use of the Hotel meeting room(s) (or restaurant area, if meeting rooms are needed by the hotel) by the condominium associations will be made available by the Hotel (no more often than twice per month), without charge on at least one week's prior notice for scheduling purposes.

27. Developer/Applicant will clean up debris on Parcel A, Parcel B and Parcel C on a continuing basis.

28. Developer/Applicant will continue its efforts with the City of Rockville to initiate operations of the multi-modal center.

29. The amount of retail space in the office building on Parcel B shall be limited to 19,000 square feet in total regardless of the amount approved by the City of Rockville.

30. The final architectural design of the Office Building and parking structure on Parcel B will be submitted to the presidents of each of the association boards of directors of Condominium Residences I and II for their review (so that they can assure compliance

with this memorandum of understanding) prior to and during the Detailed Application process.

31. No further changes or modifications to the overall Fallsgrove Comprehensive Plan shall be submitted to the City of Rockville which are in contravention of this Agreement without the expressed written approval of the boards of directors of the Condominium Residences I and Condominium Residences II of Fallsgrove.

32. If any party hereto believes any other party has breached an obligation under this Agreement, then such party may submit such breach, in writing to the other party and the parties shall meet at a mutually convenient time to discuss the alleged breach. If no sooner than ten (10) days after such meeting the party who has alleged to have breached this Agreement fails to commence to remedy such breach, any party may submit the dispute to binding arbitration (the "Arbitration"). If either party elects to submit a matter to such Arbitration, such party shall so notify the other party that such party has elected to have the issues submitted for determination by a three-member panel (the "Arbitrators") of the American Arbitration Association ("AAA"). The Arbitration shall be conducted in accordance with applicable Commercial Arbitration Rules of the AAA (the "Rules"), then in effect, except as follows:

- (a) The Arbitration shall be conducted by the office of the AAA in closest proximity to Fallsgrove.
- (b) The Arbitration shall be expedited to completion within thirty (30) days after notice from Tenant electing to arbitrate.
- (c) The three-member panel shall be selected according to the AAA Rules.
- (d) The Arbitrators shall determine only those issues presented by the parties.
- (e) If the Arbitrators determine that a party failed to act in accordance with this Agreement they shall direct that such breach be corrected by the defaulting party.
- (f) The Arbitrators shall order (i) reimbursement by the defaulting party of all actual costs and expenses incurred in the Arbitration

by the non-defaulting party, if default is found, or (ii) in the event arbitration is initiated and later withdrawn unilaterally by the alleging party or, upon final determination by the arbitrators default is not found, reimbursement by the alleging party of all actual costs and expenses incurred in the Arbitration by the non-alleging defending party, as the case may be. The Arbitrators shall review the claim for reimbursement of costs and expenses to determine the reasonableness and fairness of the actual costs and expenses and ensure they are not duplicitous.

- (g) Because of the expedited process agreed to herein, no discovery shall be allowed except for the following: seven (7) days prior to the scheduled hearing, the Parties shall exchange all documents which the Parties intend to use at the scheduled hearing.
- (h)
 - (i) After all of the evidence has been presented, and the hearing has concluded, the Arbitrators shall issue a ruling and/or an award within fifteen (15) days.
 - (ii) A judgment upon that award shall be enforceable in any court having jurisdiction of such matters.
 - (iii) The Arbitrators shall have no authority to award punitive damages or exemplary damages or other damages.
- (i) Each Party acknowledges that, by entering into this Agreement, each Party has agreed to arbitrate disputes and that such agreement necessarily entails a waiver of numerous rights that the Party might have were such disputes to be determined other than pursuant to Arbitration. Nonetheless, each Party knowingly and voluntarily waives all rights that it might otherwise have, including without limitation, the right to litigate such disputes in a state court forum or federal court forum having jurisdiction over this matter; the right to conduct discovery in accordance with the rules of the court in which the litigation concerning the dispute might otherwise be filed; the right to trial in such court, including without limitation the right to trial by jury; and the right to obtain certain damages and remedies that might not be awardable by the Arbitrators hereunder; and the right to an appeal of the Arbitrators' award. The foregoing enumeration of the rights waived by the Party are not intended to be exclusive, and the fact that any right is not specifically listed here shall have no effect on the fact that such right is waived by virtue of the agreement to arbitrate disputes as provided herein.

33. A copy of this Agreement, after it has been signed by the parties, shall be submitted to the City of Rockville for its consideration and incorporation of those

provisions that pertain to land use into any Application approval of CPD1999-0004B and all subsequent Detailed Applications for Parcels A, B or C.

34. The Attachments A, B, C, D, E, F are incorporated by reference into this Agreement and are enforceable.

35. This Agreement contains the entire agreement of the parties, and integrates all of the promises and understandings of the parties and constitutes their entire Agreement. The terms of this Agreement, including the WHEREAS clauses, are contractual, binding, and not mere recitals.

36. The terms of this Agreement may not be altered or amended except by written agreement signed by all of the parties (or their successors or assigns), and this provision itself may not be waived or amended except by written agreement signed by all of the parties.

37. Each party acknowledges that he/she has discussed the terms of this Agreement with advisers of their own choice, including legal counsel.

38. The parties further declare and represent that no promise, inducement, or agreement not herein expressed has been made to any of them, and that this Agreement contains the entire agreement by and among the parties.

39. This Agreement shall be governed by, and interpreted according to, the laws of the State of Maryland.

40. The parties further agree that in the event that additional documentation or instruments are needed to effectuate, in full or in part, the terms and conditions of this Agreement they will cooperate in executing such documents or instruments, and will execute such documents or instruments.

41. This Agreement shall be executed in four (4) originals, each of which shall be deemed an original for all purposes and shall be enforceable and binding on all of the parties hereto. Each such original Agreement shall be admissible into evidence as an original Agreement.

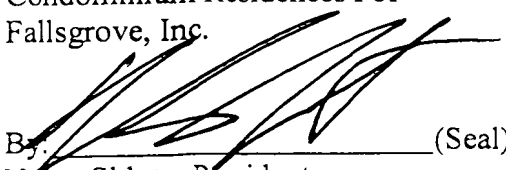
42. Each of the signatories to this Agreement expressly warrants that he/she has the necessary right and authority, and is fully empowered, to enter into this Agreement.

THE UNDERSIGNED HAVE READ THE FOREGOING AGREEMENT AND FULLY UNDERSTAND IT.

IN WITNESS WHEREOF, the parties have hereto set their hands and seals as of the date set forth above and intending to be legally bound hereby.


Condominiums:

Condominium Residences I of
Falls Grove, Inc.

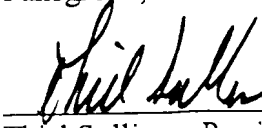
By:  (Seal)
Nolan Sklute, President

Developer/Applicant:

SBG Office Group, LLC, a
Maryland limited liability company

By:  (Seal)
Edward L. Cohen, Authorized
Representative

Condominium Residences II of
Falls Grove, Inc.

 (Seal)
Thiel Sullivan, President

4/13/2005 - 5:43 PM

2765928_v3

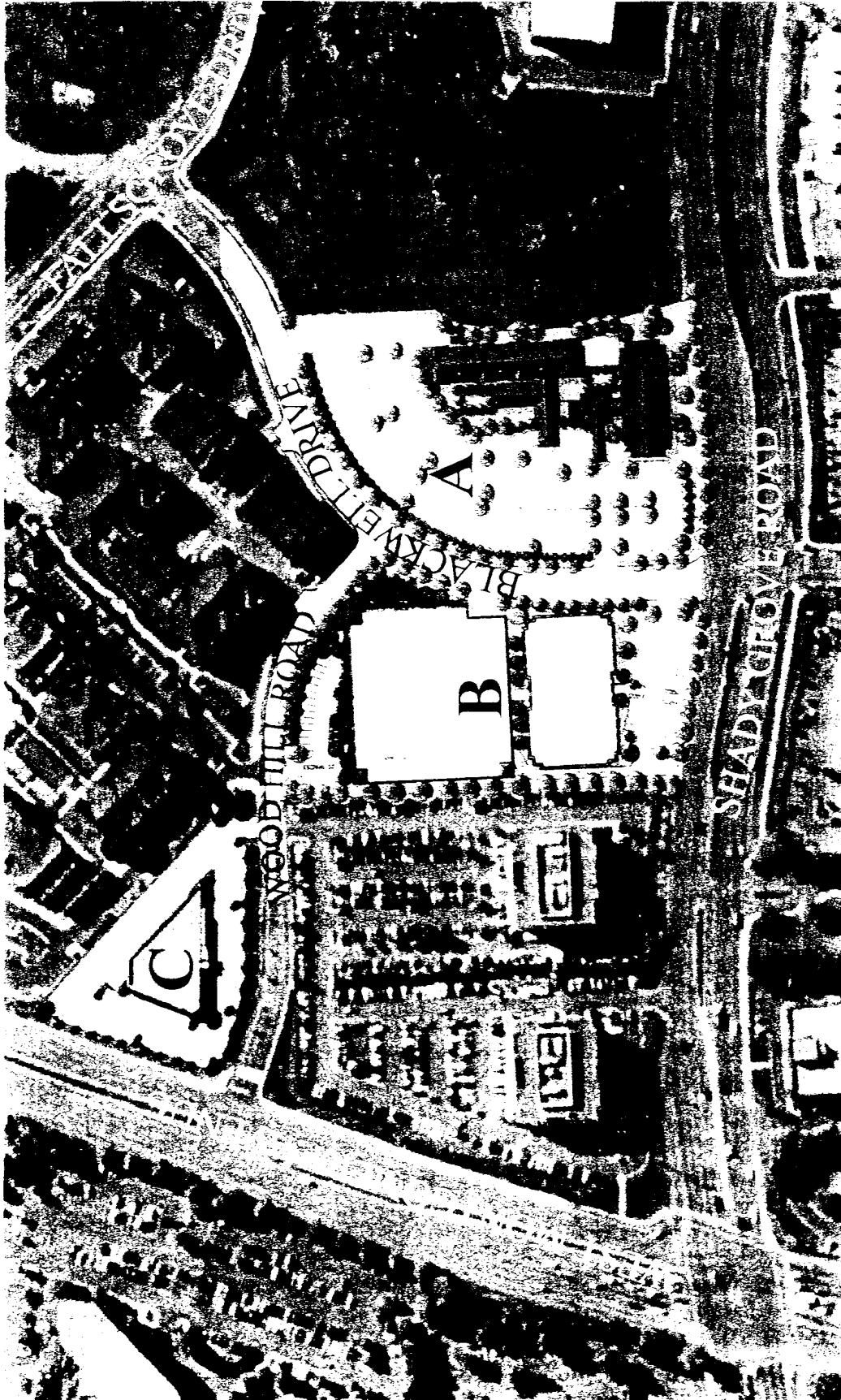
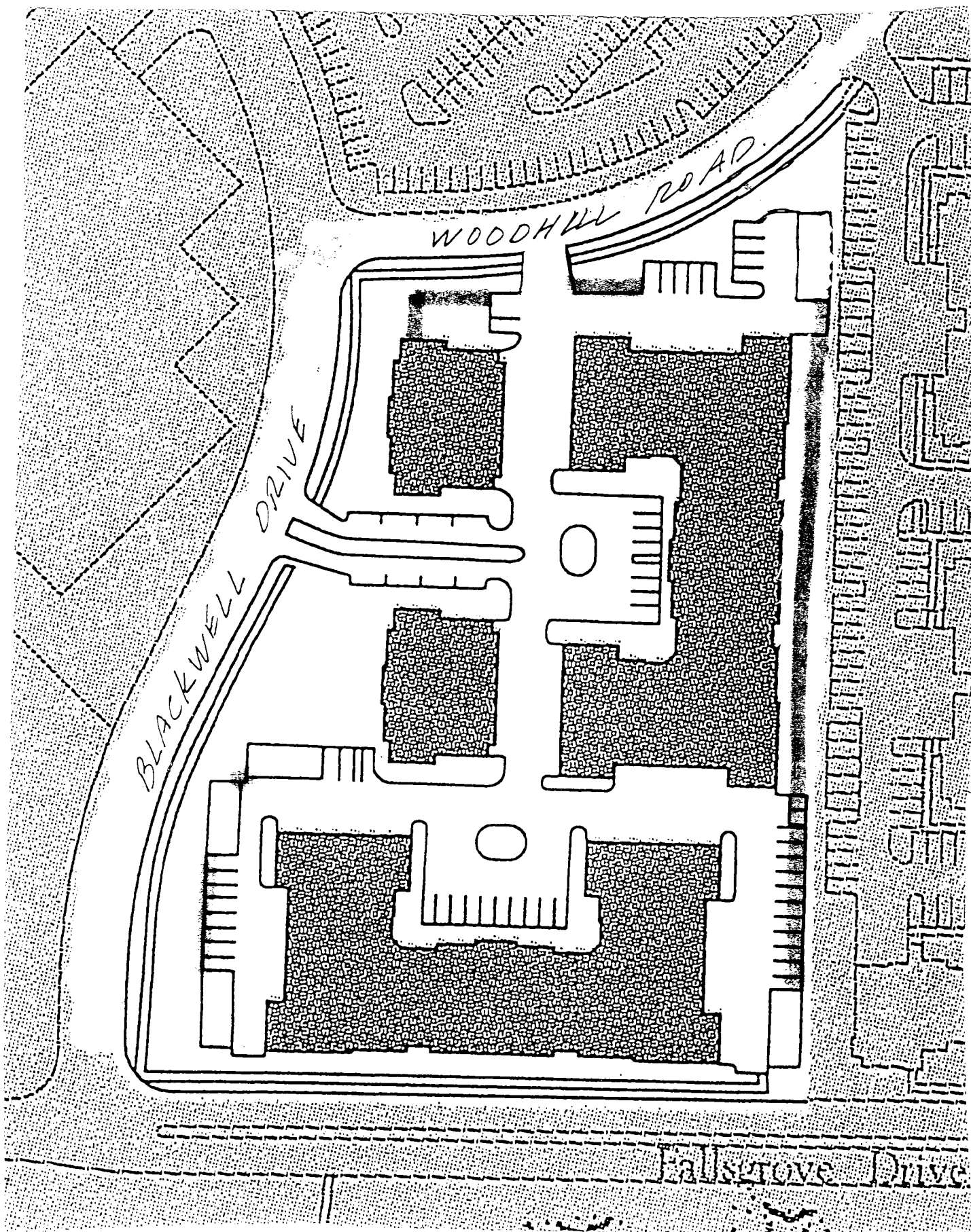


EXHIBIT "A"



03/31/2005

EXHIBIT "C" (1 of 2)

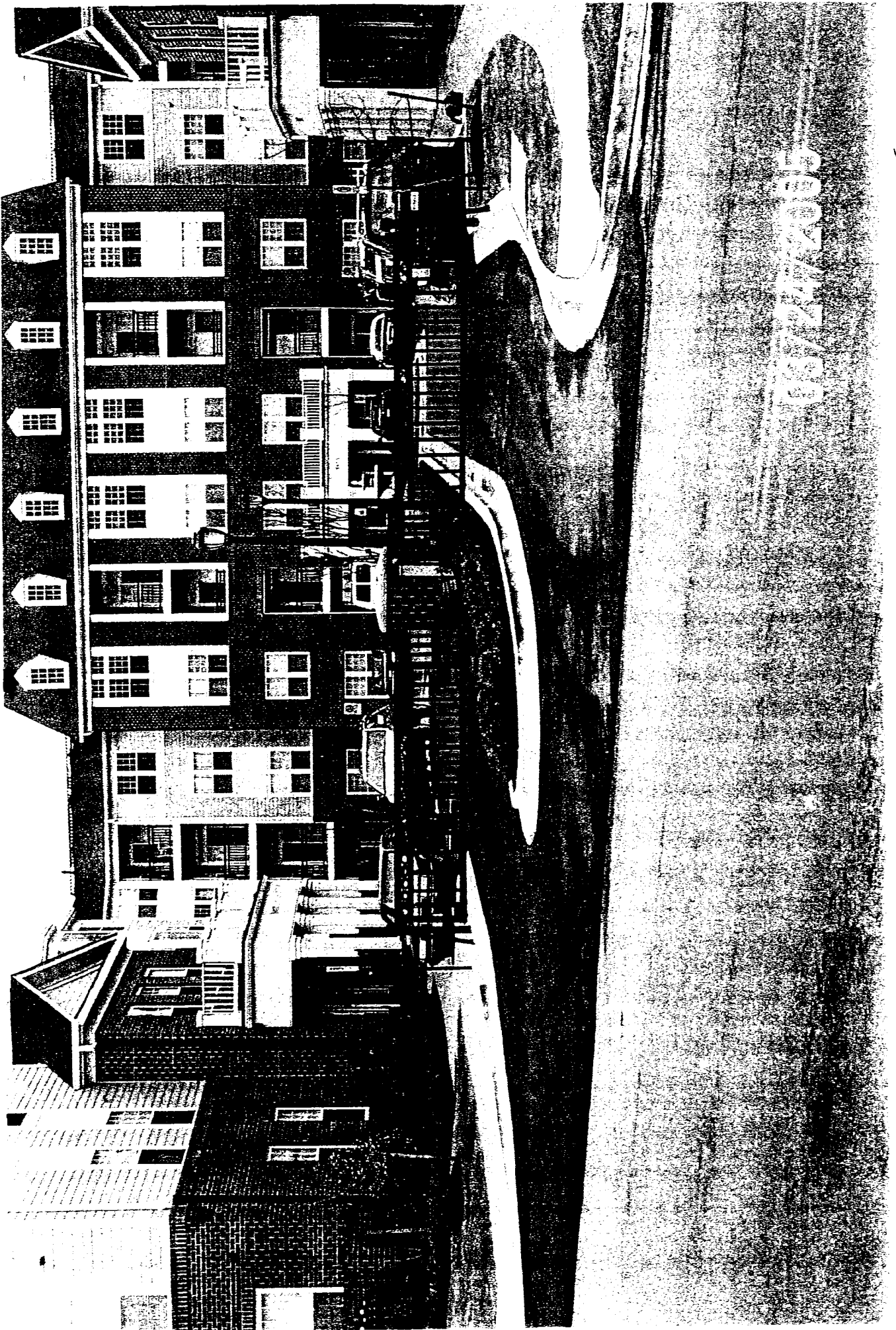
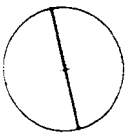
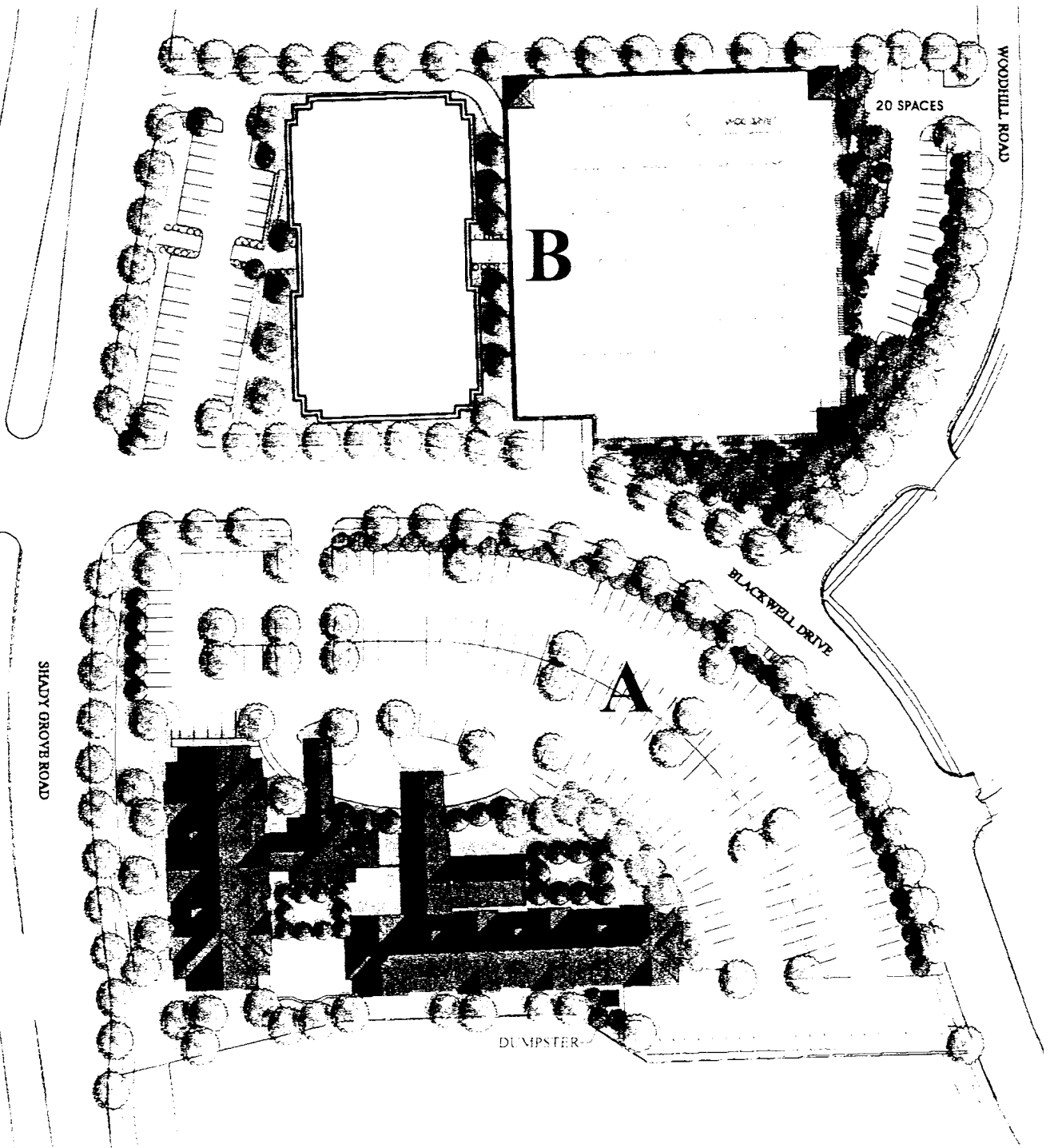


EXHIBIT "C" (2 of 2)



0' 50' 100' 200'

LEGEND

-  CANOPY TREES
-  EVERGREEN TREES
-  ORNAMENTAL TREES

LERNER

PARKER RODRIGUEZ, INC.
URBAN DESIGN LANDSCAPE ARCHITECTURE

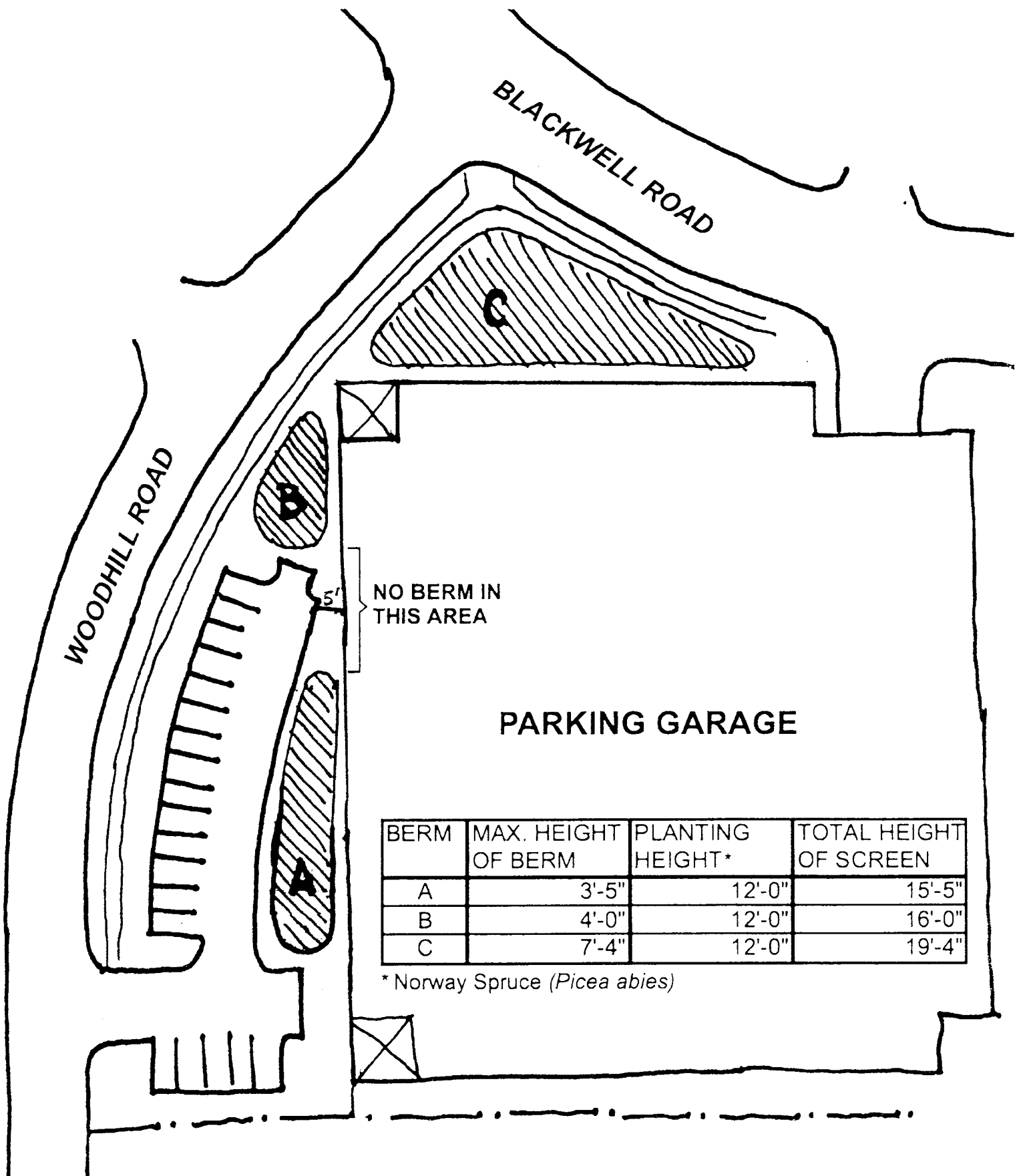
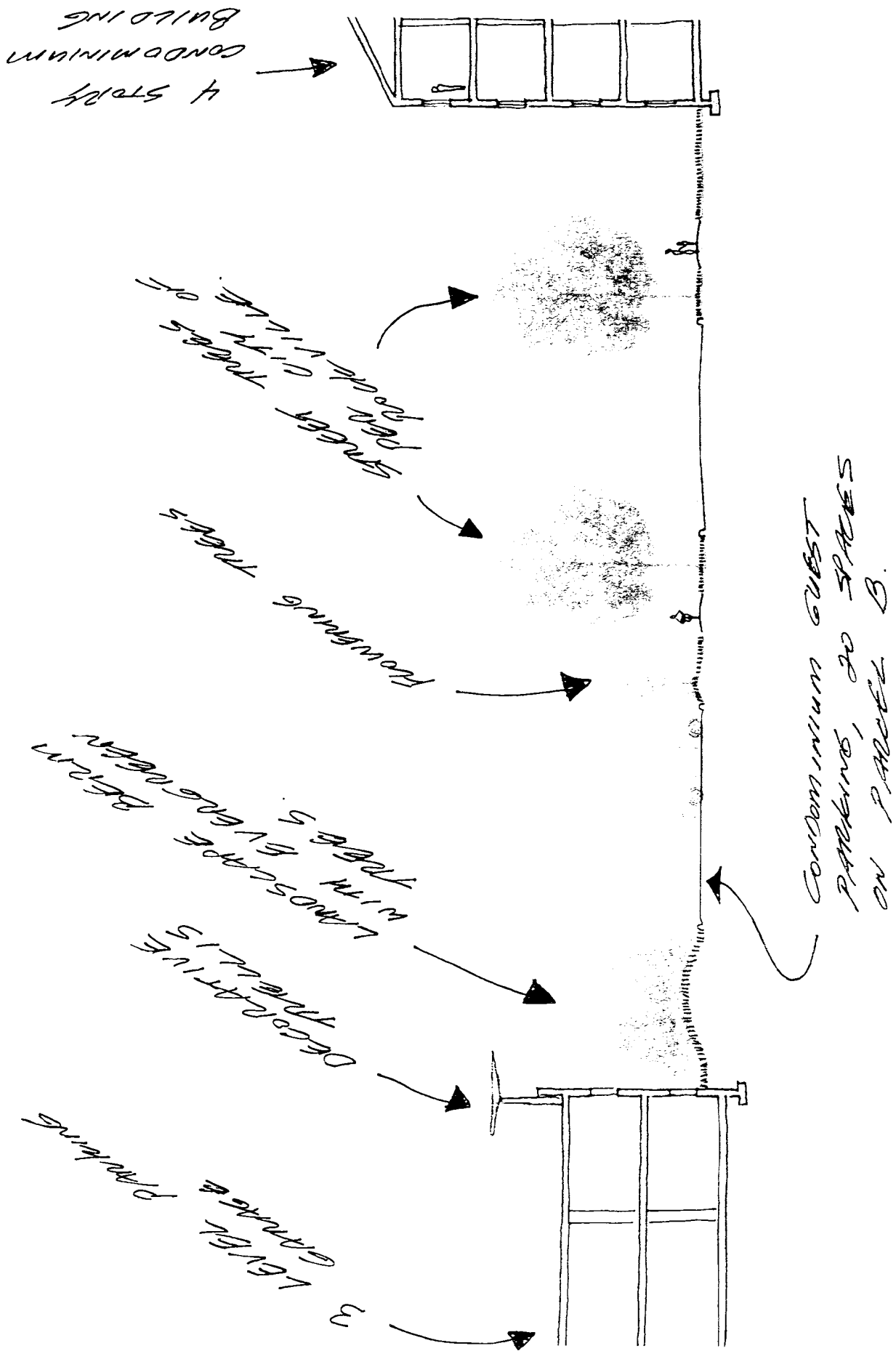
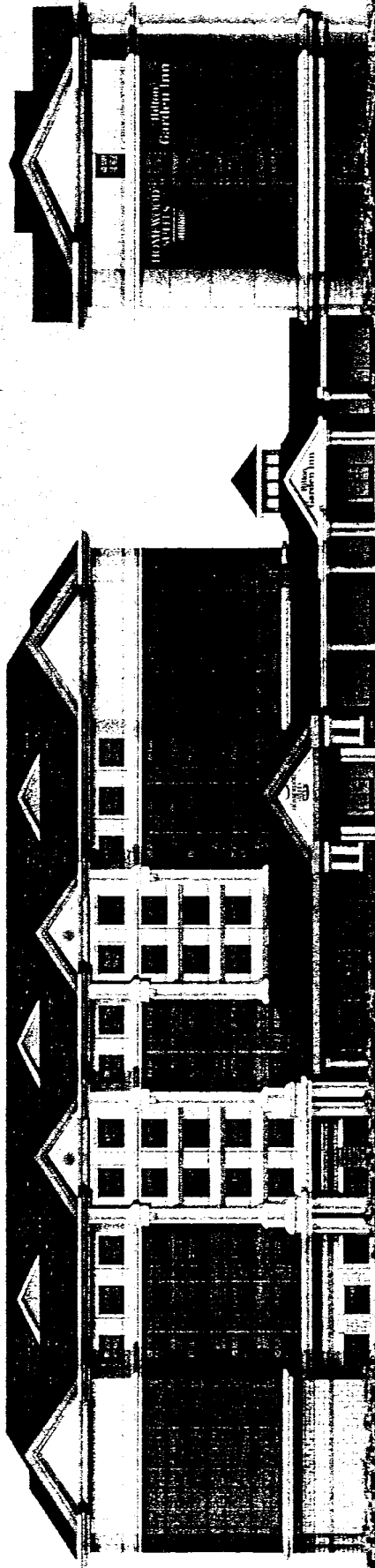


EXHIBIT "F"
(2 of 2)



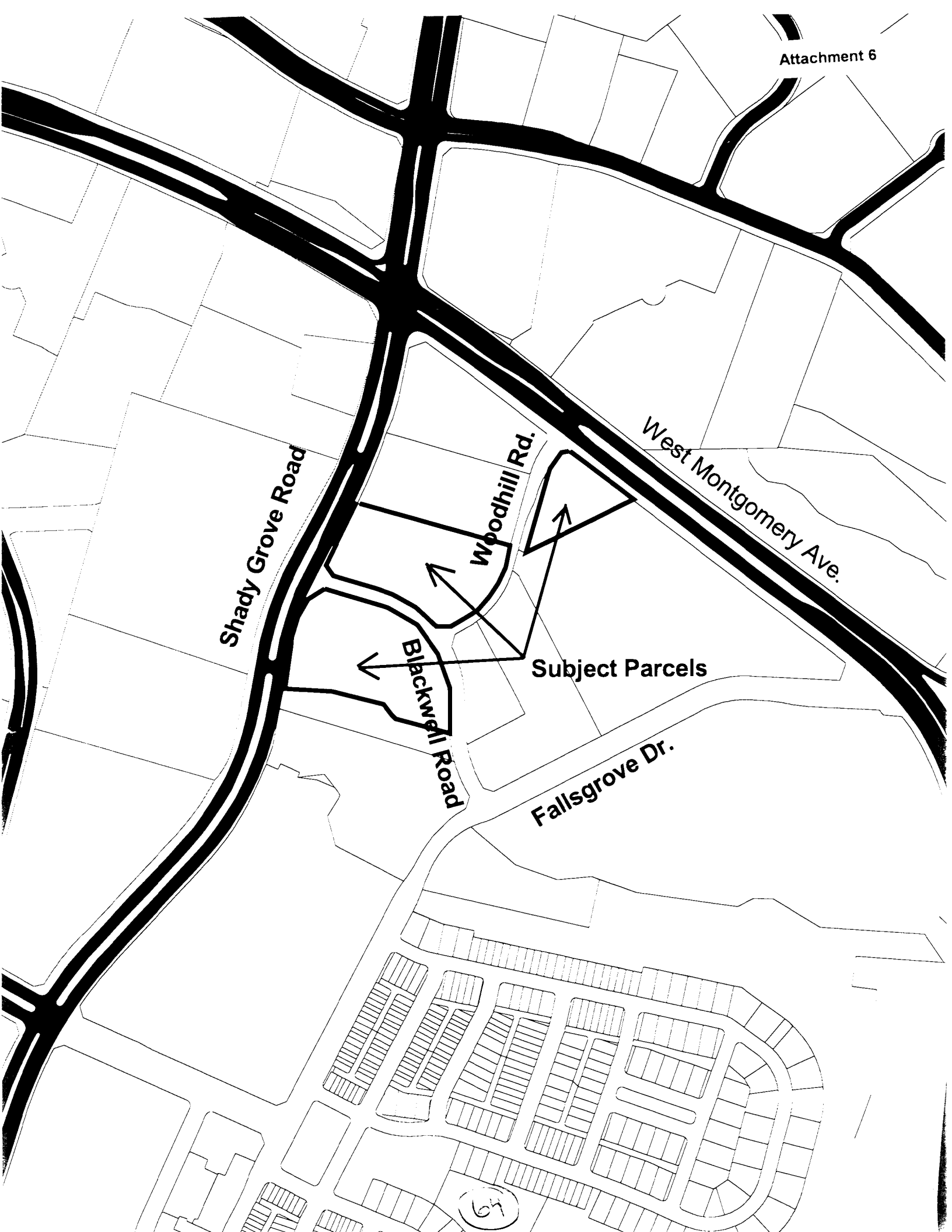


HILTON GARDEN INN /HOMewood SUITES
ROCKVILLE, MARYLAND
HOMewood SUITES FRONT ELEVATION



GORDON & GREENBERG
ARCHITECTS

EXHIBIT "F"



Shady Grove Road

Woodhill Rd.

West Montgomery Ave.

Blackwell Road

Subject Parcels

Falls Grove Dr.